DISPOSITION AND DEVELOPMENT AGREEMENT
(by Ground Lease)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (by Ground Lease) (this "**Agreement**"), is made effective for all purposes as of the 26th day of October, 2010, between (i) **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"), and (ii) **MM WASHINGTON REDEVELOPMENT PARTNERS LLC** a District of Columbia limited liability company (the "**Developer**").

RECITALS:

R-1. District owns the real property located at 44 P Street, N.W., in Washington, D.C., known for tax and assessment purposes as the southerly portion of Lot 0866 in Square 0616 upon which is located the MM Washington School.

R-2. District desires to convey the Property (hereinafter defined) to Developer by ground lease to be developed in accordance with this Agreement.

R-3 The disposition of the Property to Developer was approved on July 16, 2010 by the Council of the District of Columbia pursuant to the MM Washington High School Disposition Approval Resolution of 2010 and the MM Washington High School Surplus Declaration and Approval Resolution of 2010 (collectively, the "**Resolutions**"), subject to certain terms and conditions incorporated herein.

R-4. The Property has a unique and special importance to District. Accordingly, this Agreement makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate for a first class, urban development serving District residents and the public at large.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, District and Developer do hereby agree as follows, to wit:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

"**ADA Certificate**" is defined in Section 4.1.2.

"**ADU**" means an affordable dwelling unit, developed in accordance with the Affordability Covenant.

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms "controlling", "controlled by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

"Affordability Covenant" is that certain Affordable Housing Covenant between District and Developer in the form attached hereto as **Exhibit D**, to be recorded in the Land Records against the Property in connection with Closing.

"**Agreement**" means this Disposition and Development Agreement.

"**AMI**" means the most current area median income for the Washington DC-MD-VA metropolitan statistical area as of the date of determination, as designated by HUD.

"**Anti-Deficiency Laws**" has the meaning set forth in Section 13.16.1

"Applicable Law" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

"**Approvals**" means all applicable jurisdictional governmental approvals that pertain to any alley closings, subdivision, tax lot designations, and other approvals relating to zoning or land use, but expressly excluding the Permits.

"Approved Plans and Specifications" as defined in Section 4.2.1.

"Architect" means the architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

"Business Day" means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

"**BZA**" means the District of Columbia Board of Zoning Adjustment.

"CBEs" is defined in Section 7.5.1.

"**CBE Agreement**" is that agreement, in customary form, between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

"Certificate of Final Completion" is as defined in the Construction and Use Covenant.

"Closing" is the consummation of the ground lease of the District Property as contemplated by this Agreement.

"**Closing Date**" shall mean the date on which Closing occurs.

"Commencement of Construction" means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property equipment necessary for demolition, and (iv) obtained the Permits and commenced demolition upon the Property pursuant to the Approved Plans and Specifications. For purposes of this Agreement, the term "**Commencement of Construction**" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions.

"**Community Participation Program**" is as defined in Section 4.6.1.

"**Completion of Construction**" is as defined in the Construction and Use Covenant.

"Concept Plans" are the design plans, submitted by Developer and approved by District as of the Effective Date herein, which serve the purpose of establishing the major direction of the design of the Project.

"Construction and Use Covenant" is that certain Construction and Use Covenant between District and Developer, in the form attached hereto as **Exhibit C**, to be recorded in the Land Records against the Property in connection with Closing.

"**Construction Consultant**" is as defined in Section 4.7.

"**Construction Drawings**" mean the Concept Plans, the Schematic Plans, the Design Development Plans and the Construction Plans and Specifications, which shall be submitted by Developer to District and subject to District's approval, pursuant to Article 4.

"Construction Plans and Specifications" mean the detailed architectural drawings and specifications that are prepared for all aspects of the Project in accordance with the approved Design Development Plans and that are used to obtain Permits, detailed cost estimates, to solicit and receive construction bids, and to direct the actual construction of the Project.

"**DDOE**" means the District of Columbia Department of the Environment.

"**Debt Financing**" shall mean the financing to be obtained by Developer from an Institutional Lender to fund the costs set forth in the Project Budget, other than the Equity Investment.

"**Deposits**" is defined in Section 2.2.2.

"**Design Development Plans**" are the design plans produced after review and approval of Schematic Plans that reflect refinement of the approved Schematic Plans, showing all aspects of the Project at the correct size and shape. The Design Development Plans shall include: (i) the refined Schematic Plans supplemented with material and design details, including size and scale of façade elements, which are presented in detailed illustrations and 3-dimensional images; (ii) illustrations and wall sections of façade design elements and other important character elements (1/2" –1" = 1'); (iii) exterior material samples, and (iv) responses to and revisions based on comments, concerns, and suggestions of District relating to the Schematic Plans.

"**Developer Default**" is defined in Section 8.1.1.

"**Developer's Agents**" mean the Developer's agents, employees, consultants, contractors, and representatives.

"Development and Completion Guaranty" is that guaranty, attached hereto as **Exhibit F**, to be executed by Guarantors, which shall bind the Guarantors to develop and otherwise construct the Project in the manner and within the time frames pursuant to the terms of this Agreement, the Ground Lease and the Construction and Use Covenant.

"Development Plan" means Developer's detailed plans for developing, constructing, financing, using, and operating the Project, pursuant to the Permitted Uses.

"**Disapproval Notice**" is defined in Section 4.2.2.

"**Disposal Plan**" is defined in Section 2.3.1(d).

"**Disposition and Development Agreement Deposit**" is defined in Section 2.2.2.

"**District Default**" is defined in Section 8.1.2.

"**DOES**" is the District of Columbia Department of Employment Services.

"**DSLBD**" is the District of Columbia Department of Small and Local Business Development.

"**Effective Date**" is the date first written above, which shall be the date of the last Party to sign this Agreement as set forth on the signature pages attached hereto, provided that all Parties shall have executed and delivered this Agreement to one another.

"Environmental Laws" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface

water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding that is required for the development and construction of the Project in excess of Debt Financing, but specifically excluding funding in the form of a mezzanine loan.

"**Feasibility Termination Date**" is defined in Section 2.3.1(a).

"**Final Certificate of Completion**" shall have the meaning as defined in the Construction and Use Covenant.

"First Source Agreement" is that agreement between the Developer and DOES, entered into in accordance with Section 7.6 herein, governing certain obligations of Developer regarding job creation and employment generated as a result of the Master Project.

"**Final Project Budget**" is defined in Section 9.4.2.

"Force Majeure" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Developer, Developer's Agents, or its Members; (ii) is not due to the fault or negligence of Developer, Developer's Agents, or its Members; (iii) is not reasonably foreseeable and avoidable by the Developer, Developer's Agents, or its Members or District in the event District's claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition, (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specifications are no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members.

"**Grant Agreement**" means that certain Grant Agreement, dated as of September 17, 2010, between District and Developer.

"**Green Building Act**" means that certain act of the District of Columbia Council enacted as D.C. Law 16-234 (effective March 8, 2007) and codified as D.C. Code § 6-1451.01, *et. seq.*

"**Green Communities Criteria**" is defined in Section 7.8.

"**Ground Lease**" is defined in Section 2.1.

"**Ground Rent**" is defined in Section 2.1.

"**Ground Lease Deposit**" is defined in Section 2.2.3.

"**Guarantor(s)**" is Mission First Housing Development Corporation, and any successor(s) approved by District pursuant to Section 4.5.

"**Guarantor Submissions**" shall mean the current audited financial statements and audited balance sheets, profit and loss statements, cash flow statements and other financial reports and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct and complete).

"Hazardous Materials" means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

"**HUD**" is the United States Department of Housing and Urban Development.

"**Improvements**" mean landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Development Plan and Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Agreement.

"**Institutional Lender**" means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) a governmental agency; or (viii) a charitable organization regularly engaged in making loans secured by real estate.

"Land Records" means the property records maintained by the Recorder of Deeds for the District of Columbia.

"**Letter of Credit**" means an irrevocable, unconditional, automatically renewed, stand-by letter of credit on a form and from a bank reasonably acceptable to District.

"Member" means any Person with an ownership interest in Developer.

"**Mortgage**" means a mortgage, deed of trust, mortgage deed, or such other classes of documents as are commonly given to secure advances on real estate and leasehold estates under the laws of the District of Columbia.

"**Other Submissions**" is defined is Section 4.6.

"**Outside Closing Date**" is defined in Section 6.1.1.

"Party" when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and Developer.

"Permits" means all demolition, site, building, construction, and other permits, approvals, licenses, and rights, including, without limitation, all required approvals to properly subdivide Lot 0866 in Square 0616 so as to create the Property in accordance with the Assessments and Taxation Lot designation , required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction, operation, and maintenance of the Project in accordance with the Development Plan and this Agreement.

"Permitted Exceptions" has the meaning given it in Section 2.4.2.

"**Permitted Uses**" means the uses set forth in the Permitted Uses Plan, as further identified in the Development Plan and Submissions, the location of each of which shall be as identified in the Permitted Uses Plan, and no other uses.

"**Permitted Uses Plan**" shall mean the adaptive re-use development of the Property, including no less than 80 Residential Units (including at least 76 ADU's as more particularly

specified in Section 7.7 hereof and the Affordability Covenant) and approximately 15,000 square feet of community programming space, as more particularly shown in the Permitted Uses Plan required pursuant to Section 4.6.4.

"Person" means any individual, corporation, limited liability company, trust, partnership, association, or other entity.

"**Progress Meetings**" is defined in Section 4.4.

"**Prohibited Person**" shall mean any of the following Persons: (A) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (B) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) Any Person suspended or debarred by HUD or by the District of Columbia government; or (F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

"Project" means those Improvements on the Property, and the development and construction thereof in accordance with the Permitted Uses Plan, the Development Plan, this Agreement, the Ground Lease and the Construction and Use Covenant.

"**Project Budget**" means Developer's budget for construction of the Project that includes a cost itemization prepared by Developer specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, as may be modified from time to time in accordance with this Agreement.

"**Project Deposit**" has the meaning given it in Section 2.2.1.

"Project Funding Plan" has the meaning given it in Section 9.1.

"Promissory Note (Ground Rent)" means that certain Promissory Note, in the form attached hereto as **Exhibit K**, in the principal amount of Two Million Dollars ($2,000,000.00).

"Property" means all right, title, and interest of District located at 44 P Street, N.W., in Washington, D.C., known for tax and assessment purposes as the southerly portion of Lot 0866 in Square 0616, which Property is the subject of the filing of a proposed subdivision plat by Developer with the District of Columbia, and upon the approval of such subdivision plat the Property will be designated as a new Lot for tax and assessment purposes, and upon which Property is located the MM Washington School, together with such additional property as is required for set-backs and appurtenant rights, as more particularly described in the plat in **Exhibit A** attached hereto and incorporated by reference, together with all improvements thereon and all appurtenances thereto as of the Effective Date.

"Related Agreements" means the Construction and Use Covenant, the Guaranty, the Affordable Housing Covenant, the Grant Agreement, the CBE Agreement and the First Source Agreement.

"Residential Units" means not less than eighty (80) residential senior rental apartment units to be constructed on the Property in accordance with the Development Plan and this Agreement, which eighty (80) residential senior rental units shall include no less than seventy-six (76) ADUs, as required by Section 7.7 and the Affordability Covenant. The location of the Residential Units shall be as shown on the Permitted Uses Plan.

"Resolutions" is defined in the Recitals.

"Schedule of Performance" means that schedule of performance, attached hereto as **Exhibit G** and incorporated herein, setting forth the timelines for milestones in the design, development, construction, and completion of the Project (including a construction timeline in customary form) together with the dates for submission of documentation required under this Agreement, which schedule shall be attached to the Development Plan and to the Construction and Use Covenant.

"Scheduled Closing Date" is defined in Section 6.1.1.

"Schematic Plans" are the design plans that present a developed design based on the approved Concept Plans, and illustrate the development of building facades, scale elements, and materials. The Schematic Plans shall include: (i) a site plan (1/32' = 1') that illustrates revisions and further development of ideas presented in Concept Plans; (ii) street-level floor plans, a roof plan, and other relevant floor plans (1/16" = 1'); (iii) illustrative elevations and renderings sufficient to review the Master Development (minimum 1/8" = 1'); (iv) 3-dimensional massing diagrams or models and perspective sketches sufficient to review the Master Development; (v) one set of 24" x 36" presentation boards with the foregoing items shown thereon; (vi) illustrations and wall sections of façade design elements and other important character elements (½" – 1" = 1'); (vii) exterior material samples; (viii) a summary chart showing floor area, building coverage of the site, building height, floor area ratios, and number of parking spaces and

loading docks, and the amount of space dedicated to recreational use; and (ix) such other drawings or documents as District may reasonably request related to the foregoing.

"**Second Notice**" means that notice given by Developer to District in accordance with Section 4.2.2 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE CONSTRUCTION DRAWINGS ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH CONSTRUCTION DRAWINGS]"; (c) be delivered in the manner prescribed in Section 12.1, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"Settlement Agent" means Premium Title & Escrow, LLC, as agent for Developer, the title agent selected by Developer and mutually acceptable to Developer and District.

"Settlement Statement" is the statement prepared by the Settlement Agent setting forth the sources and uses of all acquisition funds associated with Closing.

"**Stabilization**" means that point in time when not more than ninety-five percent (95%) of the Residential Units are leased by Developer to tenants and when income from operation of the Project is sufficient in amount to pay all operating expenses related to the operation of the Project.

"**Studies**" is defined in Section 2.3.1.

"**UST Act**" is defined in Section 2.3.3.

"**UST Regulations**" is defined in Section 2.3.3.

ARTICLE 2
GROUND LEASE; DEPOSITS; CONDITION OF PROPERTY

2.1. GROUND LEASE OF PROPERTY

Subject to and in accordance with the terms of this Agreement, District shall lease to Developer and the Developer shall lease from District, the Property. At Closing, the Property shall be leased to the Developer pursuant to an unsubordinated, "triple net" ground lease (the "**Ground Lease**") in the form attached hereto as **Exhibit B**. The Ground Lease shall have the term of ninety-nine (99) years, which term will commence as of the date of Closing. The ground rent payable by the Developer to District under the Ground Lease shall be Two Million Dollars ($2,000,000.00) (the "**Ground Rent**"). The Developer shall pay all Ground Rent due and payable under the Ground Lease by delivery to District at Closing of the Promissory Note (Ground Rent). The principal amount of the Promissory Note (Ground Rent) shall be attributable Two Hundred Thousand Dollars ($200,000.00) to the land component of the Property, and One Million Eight Hundred Thousand Dollars ($1,800,000.00) to the building component of the Property.

2.2 DEPOSITS; LETTERS OF CREDIT

2.2.1 Delivery of Project Deposit

The Developer, simultaneously with the submission of a subdivision plat defining the exact boundaries of the Property, for approval and signature by the District of Columbia, will deliver to District deposits in the form of Letters of Credit in the form attached hereto as **Exhibit E** in the aggregate amount of Fifty Thousand Dollars ($50,000.00) (collectively, the "**Project Deposit**"). The Project Deposit is not payment on account of and shall not be credited against any amounts due under this Agreement; rather, the Project Deposit shall be used as security to ensure Developer's compliance with this Agreement and the Construction and Use Covenant and may be drawn on by District in accordance with the terms hereof.

2.2.2 Delivery of Disposition and Development Agreement Deposit

Upon execution of this Agreement, Developer shall deliver to District an additional deposit in the form of an additional Letter of Credit in the form attached hereto as **Exhibit E** in the amount of Fifty Thousand Dollars ($50,000.00), which shall be used as security to ensure Developer's development and construction of the Project, compliance with the obligations set forth in this Agreement, and execution and delivery by Developer of the Ground Lease (the "**Disposition and Development Agreement Deposit**").

2.2.3 Delivery of Ground Lease Deposit

Prior to the effective date of the Ground Lease, Developer shall deliver to District an additional deposit in the form of an additional Letter of Credit in the form attached hereto as **Exhibit E** in the amount of One Hundred Thousand Dollars ($100,000.00), which shall be used as security to ensure Developer's development and construction of the Project, compliance with the obligations set forth in this Agreement, and execution and delivery by Developer of the

Ground Lease (the "**Ground Lease Deposit**"). The Project Deposit, the Disposition and Development Agreement Deposit and the Ground Lease Deposit may be referred to collectively as the "**Deposits**".

2.2.4 Reduction of Deposits

Upon the satisfaction of the applicable requirement specified in (1) through (5) below, and the delivery by Developer to District of a written request for the reduction of the amount of the Deposits then held by District, District shall permit a reduction of the amount of the Deposits required to be deposited with District to the applicable amount set forth in (1) through (5) below, provided that (i) no Developer Default or event with notice or the passage of time or both would constitute a Developer Default then exists under this Agreement or the Related Agreements; (ii) Developer has demonstrated to the reasonable satisfaction of District that all the conditions for such reduction have been satisfied and (iii) simultaneous with such written request, Developer delivers to District a Letter of Credit in the form attached hereto as **Exhibit E** in the stated face amount of not less than the full amount of the Deposit required to be then deposited with District given the reductions set forth below. In the event District terminates this Agreement in accordance with Section 8.2, it shall have the right to retain the Deposits as liquidated damages:

(1) Upon 25% Completion of Construction, the amount of the Deposits (other than the Ground Lease Deposit) shall be reduced by 15%.

(2) Upon 50% Completion of Construction, the amount of the Deposits (other than the Ground Lease Deposit) shall be reduced by 35%.

(3) Upon 75% Completion of Construction, the amount of the Deposits (other than the Ground Lease Deposit) shall be reduced by 50%.

(4) Upon Completion of Construction, the amount of the Deposits (other than the Ground Lease Deposit) shall be reduced by 75%.

(5) Upon issuance of the Certificate of Final Completion and the execution and delivery of the Ground Lease by Developer, the Deposits (other than the Ground Lease Deposit) shall be released in their entirety.

(6) Upon Stabilization, the Ground Lease Deposit shall be released in its entirety.

2.3 CONDITION OF PROPERTY

2.3.1 Feasibility Studies; Access to District Property.

(a) For a period from and after the Effective Date up to that date which is the earlier to occur of (i) ninety (90) days after the Effective Date, or (ii) October 15, 2010, Developer shall have the right to perform Studies (as hereinafter defined) on the Property using experts of its own choosing and shall have access to the Property for the purposes of performing Studies (such date, the "**Feasibility Termination Date**". Entry to the Property by Developer shall be in accordance

with the terms of the Right of Entry Agreement, dated December 7, 2009, entered into by District and Developer, as it may be extended from time to time. Developer and Developer's Agents shall have the right to enter the Property for purposes of conducting surveys, soil tests, environmental studies, engineering tests, and such other tests, studies, and investigations (hereinafter "**Studies**") as Developer deems necessary or desirable to evaluate the Property; provided, Developer's Agents shall not conduct any invasive Studies on the Property without the prior written consent of District and, if approved, shall permit a representative of District to accompany Developer or Developer's Agents during the conduct of any such invasive Studies. At any time up until the Feasibility Termination Date Developer by notice to District may terminate this Agreement, in which case neither Developer nor District shall have any rights or obligations hereunder except for those rights or obligations which specifically survive the termination of this Agreement, and the Deposits previously made by the Developer shall be returned to the Developer.

(b) Developer and Developer's Agents are solely responsible for obtaining any necessary licenses and permits for the Studies and any work associated therewith, including transportation and disposal of materials. In addition, Developer and Developer's Agents shall be obligated to comply with all Applicable Law and the provisions of this Agreement during their entry on the Property and while conducting any Studies.

(c) Prior to entering on the Property, Developer shall provide District (i) written notice, including a written description of the intended Studies, (ii) evidence of insurance, as required under the terms of this Agreement, and (iii) copies of any required licenses and notices in accordance with Section 2.3.1(b).

(d) In the event Developer or Developer's Agents disturbs, removes or discovers any materials or waste from the Property while conducting the Studies, or otherwise during its entry on the Property, which are determined to be Hazardous Materials as defined herein, Developer shall notify District and DDOE within one (1) business day after its discovery of such Hazardous Materials. Thereafter, within ten (10) days after its discovery of such Hazardous Materials, Developer shall submit a written notice of a proposed plan for disposal (the "**Disposal Plan**") to District and DDOE. The Disposal Plan shall contain all identifying information as to the type and condition of the Hazardous Materials or waste discovered and a detailed account of the proposed removal and disposal of the Hazardous Materials, including the name and location of the hazardous waste disposal site. DDOE may conduct an independent investigation of the Property, including but not limited to, soil sampling and other environmental testing as may be deemed necessary. Upon completion of DDOE's investigation, District and/or the DDOE shall notify Developer of its findings and shall notify Developer by written notice of its approval or disapproval of the proposed Disposal Plan. In the event DDOE disapproves the proposed Disposal Plan, Developer shall resubmit a revised Disposal Plan to District and DDOE. Developer shall seek the advice and counsel of DDOE prior to any resubmission of a proposed Disposal Plan. Upon review of the revised Disposal Plan, District or DDOE shall notify Developer of its decision. Upon approval of the Disposal Plan, Developer shall remove and dispose of all Hazardous Materials in accordance with the approved Disposal Plan and all Applicable Law; provided, however, Developer shall not be required to begin its removal and disposal of Hazardous Materials not already disturbed or removed until after Closing. Within

seven (7) business days after the disposal of any Hazardous Materials or waste, Developer shall provide District such written evidence and receipts confirming the proper disposal of all Hazardous Materials or waste removed from the District Property.

(e) From and after the Feasibility Termination Date, Developer shall not have the right to object to any condition that may be discovered, offset any amounts from the Purchase Price, or to terminate this Agreement as a result of such Studies.

(f) Developer hereby indemnifies and holds District harmless and shall defend District (with counsel reasonably satisfactory to District) from and against any and all losses, costs, liabilities, damages, expenses, mechanic's liens, claims and judgments, including, without limitation, reasonable attorneys' fees and court costs, incurred or suffered by District as a result of any entry on the District Property or Studies or other activities at the Property conducted by Developer or Developer's Agents. This provision shall survive Closing or the earlier termination of this Agreement.

(g) Developer covenants and agrees that Developer shall keep confidential all information obtained by Developer as to the condition of the Property; provided, however, that (i) Developer may disclose such information to its Members, officers, directors, attorneys, consultants, Settlement Agent, and potential lenders so long as Developer directs such parties to maintain such information as confidential and (ii) Developer may disclose such information as it may be legally compelled so to do. The foregoing obligation of confidentiality shall not be applicable to any information which is a matter of public record or, by its nature, necessarily available to the general public. This provision shall survive Closing or the earlier termination of this Agreement.

(h) Any access to the Property by Developer pursuant to this Section shall additionally be subject to all of Developer's insurance obligations contained in Article 11 and Developer shall restore the Property after such tests are completed.

2.3.2 Soil Characteristics. District hereby states that, to the best of its knowledge, the soil on the Property has been described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia and as shown on the Soil Maps as Ub—Urban Land. Developer acknowledges that, for further soil information, Developer may contact a soil testing laboratory, the D.C. Department of Environmental Services or the Soil Conservation Service. The foregoing is set forth pursuant to requirements contained in D.C. Official Code § 42-608(b) and does not constitute a representation or warranty by District.

2.3.3 Underground Storage Tanks. In accordance with the requirements of Section 3(g) of the D.C. Underground Storage Tank Management Act of 1990, as amended by the District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992 (D.C. Code § 8-113.01, *et seq.*) (collectively, the "**UST Act**") and the applicable D.C. Underground Storage Tank Regulations, 20 DCMR Chapter 56 (the "**UST Regulations**"), District hereby represents and warrants to Developer that it is unaware of any "underground storage tanks" (as defined in the UST Act) located on the Property or previously removed from

the Property during District's ownership. Information pertaining to underground storage tanks and underground storage tank removals of which the D.C. Government has received notification is on file with the District Department of the Environment, Underground Storage Tank Branch, 51 N Street, N.E., Third Floor, Washington, D.C., 20002, telephone (202) 535-2525. District's knowledge for purposes of this Section shall mean and be limited to the actual knowledge of the Deputy Mayor for Planning and Economic Development. The foregoing is set forth pursuant to requirements contained in the UST Act and UST Regulations and does not constitute a representation or warranty by District.

2.3.4 AS-IS. DISTRICT SHALL LEASE THE PROPERTY TO DEVELOPER IN "AS IS", "WHERE IS" CONDITION WITH ALL FAULTS AND DISTRICT MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO THE SUITABILITY OR FITNESS OF THE PROPERTY OR ANY IMPROVEMENTS THEREON, AS TO ANY LAW, OR ANY OTHER MATTER AFFECTING THE USE, VALUE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY, OR, EXCEPT AS SET OUT IN SECTIONS 2.3.3, 2.7 AND 3.1, AS TO ANY OTHER MATTER WHATSOEVER. DISTRICT SHALL HAVE NO RESPONSIBILITY TO PREPARE THE PROPERTY IN ANY WAY FOR DEVELOPMENT AT ANY TIME. DEVELOPER ACKNOWLEDGES THAT NEITHER DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DISTRICT HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY IMPROVEMENTS THEREON. THE PROVISIONS HEREOF SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

2.4 TITLE

2.4.1 Developer hereby acknowledges that title to the Property has been investigated by Developer and is deemed acceptable, effective as of the Effective Date.

2.4.2 At Closing, District shall lease the Property to Developer "AS IS" and subject to the Permitted Exceptions. The **"Permitted Exceptions"** shall be the following collectively: (i) all title matters, encumbrances or exceptions of record as of the Effective Date; (ii) encroachments, overlaps, boundary disputes, or other matters which would be disclosed by an accurate survey or an inspection of the Property as of the Effective Date; (ii) any documents described in this Agreement that are to be recorded in the Land Records pursuant to the terms of this Agreement; (iii) defects or exceptions to title to the extent such defects or exceptions are created by Developer or Developer's Agents or created as a result of or in connection with the use of or activities on the District Property or any portion thereof by Developer or Developer's Agents; (iv) all building, zoning, and other Applicable Law affecting the Property as of the Effective Date; (v) real property taxes and water and sewer charges which are not due and payable as of Closing, subject to the obligation to pro-rate taxes on the Property as set forth in this Agreement and (vi) any easements, rights-of-way, exceptions, and other matters of record as of the Effective Date.

2.4.3 From and after the Effective Date through Closing, District agrees not to take any action that would cause a material adverse change to the status of title to the Property existing as

of the Effective Date, except as expressly required by Applicable Law or as permitted by this Agreement.

2.5. RISK OF LOSS

All risk of loss prior to Closing with respect to any and all existing improvements on the Property shall be borne by Developer; provided (i) in the event of a casualty, District shall not be required to rebuild any improvements, but shall either raze same or render same so as not to cause a risk to person or property and (ii) the foregoing is not intended and shall not be construed to impose any liability on Developer for personal injury or property damage incurred by District or any third party prior to Closing except as otherwise set forth herein to the contrary as contained in Developer's indemnification obligations contained in Section 2.3.1 and Article 11 hereof.

2.6 CONDEMNATION

2.6.1 Notice. If, prior to Closing, any condemnation or eminent domain proceedings shall be commenced by any competent public authority against the Property, District shall promptly give Developer written notice thereof.

2.6.2 Total Taking. In the event of a taking of the entire Property prior to Closing, District shall release the Deposits to Developer, this Agreement shall terminate, the Parties shall be released from any and all obligations hereunder except those that expressly survive termination, and District shall have the right to any and all condemnation proceeds.

2.6.3 Partial Taking. In the event of a partial taking prior to Closing, District and Developer shall jointly determine in good faith whether the development of the Project remains physically and economically feasible. If the Parties reasonably determine that the Project is no longer feasible, whether physically or economically, as a result of such condemnation, this Agreement shall terminate, District shall release the Deposits to Developer, the Parties shall be released from any further liability or obligation hereunder, except as expressly provided otherwise herein, and District shall have the right to any and all condemnation proceeds. If the Parties jointly determine that the Project remains economically and physically feasible, the Parties shall be deemed to have elected to proceed to Closing, the condemnation proceeds shall either be paid to Developer at Closing or, if paid to District, such amount shall be taken into consideration and appropriate adjustments to the rent due and payable under the Ground Lease shall be made; provided, however, that if no compensation has been actually paid on or before Closing, Developer shall lease the Property without any adjustment to the rent and subject to the proceedings, in which event, District shall assign to Developer at Closing all interest of District in and to the condemnation proceeds that may otherwise be payable to District, and Developer shall receive a credit at Closing in the amount of any condemnation proceeds actually paid to District prior to the Closing Date. In either event, District (as the ground lessor hereunder) shall have no liability or obligation to make any payment to Developer with respect to any such condemnation. In the event the Parties elect to proceed to Closing, District agrees that Developer shall have the right to participate in all negotiations with the condemning authority, and District shall not settle or compromise any claim to the condemnation proceeds without Developer's consent. In the event that within forty-five (45) days after the date of receipt by Developer of notice of such condemnation the Parties have not jointly determined, in accordance

with the foregoing provisions, to elect to terminate or proceed to Closing hereunder, such failure shall be deemed the Parties' election to terminate this Agreement.

2.7 SERVICE CONTRACTS AND LEASES

District has not procured or entered into any (i) service, management, maintenance, or development contracts, or (ii) leases, licenses, easements, or other occupancy agreements affecting the Property that will survive Closing. District will not hereafter enter into any such contracts or agreements that will bind the Property or Developer as successor-in-interest with respect to the Property, without the prior written consent of Developer.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 REPRESENTATIONS AND WARRANTIES OF DISTRICT

3.1.1 District hereby represents and warrants to Developer as follows:

(a) The execution, delivery and performance of this Agreement by District and the transactions contemplated hereby between District and Developer shall have been approved by all necessary parties prior to Closing and District has the authority to dispose of and ground lease the Property, pending expiration of the authority granted in the Resolution, unless extended.

(b) No agent, broker, or other Person acting pursuant to express or implied authority of District is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against Developer for a commission or finder's fee. District has not dealt with any agent or broker in connection with the lease of the Property.

(c) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which relates to the Property. There is no other litigation, arbitration, administrative proceeding, or other similar proceeding pending against District which, if decided adversely to District, would impair District's ability to perform its obligations under this Agreement.

(d) The execution, delivery, and performance of this Agreement by District and the transactions contemplated hereby between District and Developer do not violate any of the terms, conditions or provisions of any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority to which District is subject, or any agreement, contract or Law to which District is a party or to which it is subject.

3.1.2 Survival. The representations and warranties contained in Section 3.1.1 shall not survive Closing. District shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond District's control.

3.2 REPRESENTATIONS AND WARRANTIES OF DEVELOPER

3.2.1 Developer hereby covenants, represents, and warrants to District as follows:

(a) Developer is a District of Columbia limited liability company, duly formed and validly existing and in good standing, and has full power and authority under the laws of the District of Columbia to conduct the business in which it is now engaged. Mission First Development LLC, Mission First Housing Development Corporation, UM Shaw Campus LLC and Mount Lebanon Community Development Corporation are the only Members of Developer and the only Persons with an ownership interest in Developer. Neither Members nor any Person owning directly or indirectly any interest in Developer or Members is a Prohibited Person.

(b) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Developer. Upon the due execution and delivery of the Agreement by Developer, this Agreement constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby do not violate any of the terms, conditions, or provisions of (i) Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other governmental authority, or Applicable Law to which Developer is subject, or (iii) any agreement or contract to which Developer is a party or to which it is subject.

(d) No agent, broker, or other Person acting pursuant to express or implied authority of Developer is entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement or will be entitled to make any claim against District for a commission or finder's fee. Developer has not dealt with any agent or broker in connection with its lease of the District Property.

(e) There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending against Developer that, if decided adversely to Developer, (i) would impair Developer's ability to enter into and perform its obligations under this Agreement or (ii) would materially adversely affect the financial condition or operations of the Developer.

(f) Developer's lease of the District Property and its other undertakings pursuant to this Agreement are for the purpose of constructing the Project in accordance with the Development Plan and Construction Drawings and not for speculation in land holding.

(g) Neither Developer nor any of its Members are the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

3.2.2 Survival. The representations and warranties contained in Section 3.2.1 shall survive Closing for a period of two years. Developer shall have no liability or obligation hereunder for any representation or warranty that becomes untrue because of reasons beyond Developer's control.

ARTICLE 4
SUBMISSION AND APPROVAL OF CONSTRUCTION DRAWINGS; APPROVAL OF GUARANTORS

4.1 CONSTRUCTION DRAWINGS

4.1.1 Developer's Submissions for the Project. Developer shall submit to District for District's review and approval, the following drawings, plans and specifications (collectively, the "**Construction Drawings**") for the Project within the timeframes specified in the Schedule of Performance:

(a) One hundred percent (100%) complete Schematic Plans, together with the proposed Development Plan, based on the Concept Plans;

(b) Eighty percent (80%) complete Design Development Plans consistent with the approved Schematic Plans and Development Plan;

(c) Not less than eighty percent (80%) complete Construction Plans and Specifications; and

(d) One hundred percent (100%) complete Construction Plans and Specifications on or before the date of Closing.

All Construction Drawings shall be prepared and completed in accordance with this Agreement and the Permitted Uses Plan. As used in this Agreement, the term "**Construction Drawings**" shall include any changes to such Construction Drawings.

4.1.2 Approval by District. Notwithstanding anything to the contrary herein, prior to application for any Permit, Developer shall cause the Construction Drawings applicable to such Permit to become Approved Plans and Specifications prior to their application. All of the Construction Drawings shall conform to and be consistent with Applicable Law, including the applicable zoning requirements, and shall comply with the following:

(a) The Construction Drawings shall be prepared or supervised by and signed by the Architect.

(b) A structural, geotechnical, and civil engineer, as applicable, who is licensed by the District of Columbia, shall review and certify all final foundation and grading designs.

(c) Upon Developer's submission of all Construction Drawings to District, the Developer shall certify to District that the Improvements have been designed in accordance with all Applicable Law relating to accessibility for persons with

disabilities (the "**ADA Certificate**"), the form of which ADA Certificate is attached hereto as Exhibit J.

4.2 DISTRICT REVIEW AND APPROVAL OF CONSTRUCTION DRAWINGS

4.2.1 Generally. District shall have the right to review and approve or disapprove all or any part of each of the Construction Drawings, which approval shall not be unreasonably withheld, conditioned or delayed provided such Construction Drawings are consistent with the information exchanged in Progress Meetings and are in accordance with the requirements of the terms herein and Applicable Law. Any Construction Drawings approved (or any approved portions thereof) pursuant to this Section 4.2 shall be "**Approved Plans and Specifications.**"

4.2.2 Time Period for District Review and Approval. District shall complete its review of each submission of Construction Drawings by Developer and provide a written response thereto, within twenty (20) days after its receipt of the same. If District fails to respond with its written response to a submission of any Construction Drawings within such twenty (20) day period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. If District fails to approve, conditionally approve, or disapprove such Construction Drawings within ten (10) days after District's receipt of such Second Notice, then District's approval shall be deemed to have been given, provided such Construction Drawings comply with the requirements contained in Section 4.1.2.

4.2.3 Disapproval Notices. Any notice of disapproval ("**Disapproval Notice**") shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, Developer shall revise the Construction Drawings to address the objections of District and shall resubmit the revised Construction Drawings for approval, unless such requirements will materially increase the cost of the construction or materially adversely impact the operation of the Project, render the Project unable to comply with the Schedule of Performance (unless the District permits deviation from the Schedule of Performance for purposes of addressing the District's objection), or violate Applicable Laws. Any Approved Plans and Specifications may not be later disapproved by District unless any disapproval and revision is mutually agreed upon by the Parties. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

4.2.4 Submission Deadline Extensions. If Developer is proceeding diligently and in good faith and desires to extend a specified deadline for submission of a particular Construction Drawing, Developer may request such extension in writing, and District shall not unreasonably deny such a requested extension so long as it does not involve a delay in any milestone set forth in the Schedule of Performance.

4.2.5 No Representation; No Liability. District's review and approval of the Construction Drawings is not and shall not be construed as a representation or other assurance that they comply with any building codes, regulations, or standards, including, without limitation, building engineering and structural design or any other Applicable Law. District shall incur no liability in connection with its review of any Construction Drawings and is reviewing such Construction Drawings solely for the purpose of protecting its own interests.

4.3 CHANGES IN APPROVED PLANS AND SPECIFICATIONS

No material changes to the Approved Plans and Specifications shall be made without District's prior written approval. If Developer desires to make any material changes to the Approved Plans and Specifications, Developer shall submit the proposed changes to District for approval, which approval shall be granted or withheld in District's sole discretion. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed sixty (60) days.

4.4 PROGRESS MEETINGS

During the preparation of the Construction Drawings, District's staff and Developer shall hold monthly progress meetings ("**Progress Meetings**"), during which meetings Developer and District staff shall coordinate the preparation and submission of the Construction Drawings as well as their review by District.

4.5 APPROVAL OF GUARANTORS

4.5.1 The Development and Completion Guaranty required pursuant to this Agreement shall be from one or more Persons approved by District in District's sole discretion, which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Development and Completion Guaranty, taking into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person.

4.5.2 At any time upon District's request, but in any event no later than fifteen (15) days prior to Closing, each Guarantor shall submit to District updated Guarantor Submissions. In the event District determines, in its sole discretion, that a material adverse change in the financial condition of the Guarantor(s) has occurred, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed substitute guarantor.

4.6 OTHER SUBMISSIONS

Prior to Closing, Developer shall submit the following to District for review approval in District's sole but reasonable discretion ("**Other Submissions**"):

4.6.1 Community Participation Plan. Developer shall provide District a description of Developer's program for public involvement, education and outreach with respect to the Project (including input from the community that is impacted by the Project as it is designed, developed, constructed and operated) (the "**Community Participation Program**"), including a plan for implementing the Community Participation Program and shall include, without limitation, the organization(s) with whom Developer proposes to discuss the Project, a schedule for public meetings and the type of information that Developer proposes to submit to the public. The Community Participation Program shall include a mechanism to document all public meetings, including a narrative description of the events of each meeting, the concerns raised by members

of the public, and Developer's responses to such concerns. Developer shall submit such documentation to District of each meeting and shall otherwise include a summary of Developer's activities with respect to, and in furtherance of, the Community Participation Plan at each Progress Meeting.

4.6.2 Permitted Uses Plan. Developer shall provide District with the Permitted Uses Plan, which, among other things, shows the locations of the different uses throughout the Project, all in accordance with Applicable Law.

4.6.3 District's Approval of Professionals; Contracts

(a) Any Person that Developer proposes for any of the following shall be subject to District's approval, which approval shall not be unreasonably withheld or conditioned: (i) any Person engaged as a master planner for the Project; (ii) all design architects and Architects of record; (iii) the general construction contractor; and (iv) any replacement of any of the foregoing. The District's review of any proposed Person under this Section 4.6.5(a) shall be limited to whether the Person (a) reasonably has the experience and technical qualifications to provide the services required, and (b) is not a Prohibited Person.

(b) No Person that is a Prohibited Person or is debarred by HUD shall be engaged as contractor or a subcontractor or otherwise provide materials or services with respect to the Project.

(c) Upon District's request, Developer shall provide to District the contracts with any Person required to be approved by the District pursuant to the foregoing provisions of this Section 4.6.5.

4.6.4 Residential Lease Agreement. Developer shall provide to District for District's approval the form of residential lease agreement for all Residential Units, including ADU's (and any amendments thereof), which shall include the requirements of the Affordability Covenant for rental ADUs. The form of residential lease agreement must be approved by the District prior to Closing and as a condition to District's obligation to close hereunder.

4.6.5 Time Period for District Review and Approval of Other Submissions. The time period for District review and approval of the Other Submissions shall be the same as those contained in Section 4.2.2.

4.6.6 Changes to Other Submissions. No material changes to any Other Submission shall be made without District's prior written approval. If Developer desires to make any material changes to any Other Submission, Developer shall submit the proposed changes to District for approval, which approval shall be granted or withheld in District's sole but reasonable discretion. District agrees that it shall respond to any such request within a reasonable period of time, not to exceed thirty (30) days.

4.7 CONSTRUCTION CONSULTANT.

On or before the Commencement of Construction, the Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by the District, on such terms as the District may approve, (a) to review and report to the District, with respect to the Construction Drawings, the Schedule of Performance, and the conformity of such matters to this Agreement

and the Construction and Use Covenant , (b) to report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (c) to review and approve whether the construction of the Project is consistent with the requirements of this Agreement and the Construction and Use Covenant, and (d) to review and report to the District on the District's issuance of the Certificate of Final Completion. The Construction Consultant shall receive timely reports from the Architect and the Developer, as necessary, and shall promptly report any issues or problems to the District and the Developer. The Construction Consultant shall provide such certifications as are provided in this Agreement and the Construction and Use Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in the Project Budget or Final Project Budget.

ARTICLE 5
CONDITIONS TO CLOSING

5.1 CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION TO CLOSE

5.1.1 The obligations of Developer to consummate the Closing on the Closing Date shall be subject to the following conditions precedent:

(a) District shall have performed all obligations hereunder required to be performed by District prior to the Closing Date.

(b) The representations and warranties made by District in Section 3.1 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

(c) District shall have performed all of its material obligations and observed and complied with all material covenants and conditions required at or prior to Closing under this Agreement.

(d) This Agreement shall not have been previously terminated pursuant to any other provision hereof.

(e) District shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.1 herein.

(e) As of the Closing Date, there shall be no rezoning or other statute, law, judicial, or administrative decision, ordinance, or regulation (including amendments and modifications of any of the foregoing) by any governmental authorities or any public or private utility having jurisdiction over the Property that would materially adversely affect the acquisition, development, sale, or use of the Property such that the Project is no longer physically or economically feasible. This provision shall not apply to any normal and customary reassessment of the Property for ad valorem real estate tax purposes.

(f) Title to the Property shall be subject only to the Permitted Exceptions.

(g) Lot 0866 in Square 0616 shall have been legally subdivided so as to create the Property.

5.1.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.1.1 have not been satisfied by the Closing Date, provided the same is not the result of Developer's failure to perform any obligation of Developer hereunder, Developer shall have the option to (i) waive such condition and proceed to Closing hereunder; (ii) terminate this Agreement by written notice to District, whereby District will release the Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement; or (iii) delay Closing for up to thirty (30) days to permit District to satisfy the conditions to Closing set forth in Section 5.1.1. In the event Developer proceeds under clause (iii), Closing shall occur within thirty (30) days after the conditions precedent set forth in Section 5.1.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the thirty (30) day period, provided the same is not the result of Developer's failure to perform any obligation of the Developer hereunder, the Developer may again proceed under clause (i) or (ii) above. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

5.2 CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATION TO CLOSE

5.2.1 The obligation of District to lease the Property to Developer pursuant to the terms of the Ground Lease and to perform the other obligations it is required to perform on the Closing Date shall be subject to the following conditions precedent:

(a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the Closing Date.

(b) The representations and warranties made by Developer in Section 3.2 of this Agreement shall be true and correct in all material respects on and as if made on the Closing Date.

(c) This Agreement shall not have been previously terminated pursuant to any other provision hereof.

(d) District's authority, pursuant to the Resolutions, to proceed with the disposition by ground lease, as contemplated in this Agreement, shall have not previously expired.

(e) The Development Plan and all Construction Drawings for the Project shall have been approved as Approved Plans and Specifications in their entirety pursuant to Article 4.

(f) All Other Submissions shall have been approved in their entirety pursuant to Article 4.

(g) Developer shall have certified to District in writing that it is ready, willing, and able in accordance with the terms and conditions of this Agreement to lease the

Property and proceed with the development and construction of the Project in accordance with the Approved Plans and Specifications and the Construction and Use Covenant.

(h) Developer shall have executed a First Source Agreement with DOES.

(i) Developer shall not be in default under the terms of the CBE Agreement.

(j) Developer shall have furnished to District certificates of insurance or duplicate originals of insurance policies required of Developer hereunder.

(k) Developer shall have provided satisfactory evidence of its authority to lease the District Property and perform its obligations under this Agreement, which may be in the form of an opinion of Developer's counsel in such form and substance as may be reasonably required by District, together with such supporting documentation as may be reasonably required by District.

(l) Developer shall have applied for and obtained all necessary Approvals, including, if required, approval of the Project from the Historic Preservation Review Board.

(m) Developer shall have obtained all Permits required for the Project required under Section 105A of Title 12A of the D.C. Municipal Regulations.

(n) Developer shall have delivered (or caused to be delivered) the original, executed documents required to be delivered pursuant to Section 6.2.2 herein.

(o) Developer shall have secured District's approval and shall have secured all Debt Financing and the Equity Investment necessary to fully perform all development and construction obligations contained in the Construction and Use Covenant.

(p) There shall be no changes to the Project Funding Plan or the Project Budget, except to the extent such changes have been previously approved by District.

(q) Developer shall have executed a construction contract with its general contractor for the Project.

(r) There shall have occurred no material adverse change in the financial condition of the Guarantor(s) from the effective date of the information provided to District in connection with its approval of the Guarantor(s) to the Closing.

5.2.2 Failure of Condition. If all of the conditions to Closing set forth above in Section 5.2.1 have not been satisfied by the Closing Date, provided the same is not the result of District's failure to perform any obligation of District hereunder, District shall have the option, at its sole discretion, to (i) terminate this Agreement by written notice to Developer and draw on the Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement or (ii) delay Closing for up to thirty (30) days, to permit Developer to satisfy the conditions to Closing set forth in Section 5.2.1. In the event District proceeds under clause (ii), Closing shall occur within thirty (30) days after the conditions precedent set forth in

Section 5.2.1 have been satisfied, but if such conditions precedent have not been satisfied by the end of the thirty (30) day period, District may again proceed under clause (i) above, in its sole discretion. The foregoing notwithstanding, Closing shall not occur after the Outside Closing Date. If Closing has not occurred by such date, this Agreement shall immediately terminate and be of no further force and effect.

ARTICLE 6
CLOSING

6.1 CLOSING DATE

6.1.1 The Closing Date shall be held within thirty (30) days of the issuance of the final Permit required for the Project under Section 105A of Title 12A of the D.C. Municipal Regulations ("**Scheduled Closing Date**"), subject to extension as provided in Section 6.1.2 of this Agreement. Notwithstanding any provision in this Agreement to the contrary (except any provision which states that the Closing Date may be rescheduled by mutual agreement of the parties), in no event shall the Closing Date be held after the date that is one (1) year after the Effective Date (the "**Outside Closing Date**"). Closing shall occur at 10:00 a.m. at the offices of District or another location in the District of Columbia acceptable to the Parties.

6.1.2 Closing shall not occur later than the Scheduled Closing Date, except (a) by the mutual agreement of the Parties, (b) if delay results, despite the best efforts of Developer, from the failure of the government of the District of Columbia or other governmental authority having jurisdiction over the Property to grant Developer any Permit (despite timely application therefor) the Scheduled Closing Date shall be extended day-for-day during the period of such delay, but in no event not more than sixty (60) days, or (c) Developer, by notice given to District by no later than thirty (30) days prior to the then applicable Scheduled Closing Date, may extend the Scheduled Closing Date for an additional period of up to six (6) months, provided that the District shall have been satisfied in its sole discretion that the following milestones set forth in the Schedule of Performance have been satisfied: (i) the Developer shall have delivered to District 100% of the Schematic Plans for the Project, (ii) the Developer shall have submitted to the BZA its application for a planned unit development for the Project, (iii) the Developer shall have submitted to District for its approval Design Development Plans for 80% completion of the Project, and (iv) the Developer shall have made its building permit construction drawing submission to the District of Columbia Department of Consumer and Regulatory Affairs.

6.2 DELIVERIES AT CLOSING

6.2.1 District's Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, District shall execute, notarize, and deliver, as applicable, to Settlement Agent:

(a) the Ground Lease for the Property and any Memorandum of Ground Lease related thereto;

(b) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;

(c) the Affordability Covenant in recordable form to be recorded in the Land Records against the Property;

(d) a certificate, duly executed by District, stating that all of District's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date; and

(e) any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by Developer or Settlement Agent, and reasonably acceptable to District, to effectuate the transactions contemplated by this Agreement.

6.2.2 Developer's Deliveries. On or before the Closing Date, subject to the terms and conditions of this Agreement, Developer shall execute, notarize, and deliver, as applicable, to Settlement Agent:

(a) the Ground Lease and any Memorandum of Ground Lease related thereto, and all Ground Rent due thereunder as of the Closing Date;

(b) the Ground Lease Deposit, as described in Section 2.2.2;

(c) any funds if so required by the Settlement Statement to be delivered at Closing;

(d) any documents required to close on all of the Debt Financing for Developer's construction of the Project;

(e) the fully executed Development and Completion Guaranty;

(f) the Construction and Use Covenant in recordable form to be recorded in the Land Records against the Property;

(g) the Affordability Covenant in recordable form to be recorded in the Land Records against the Property;

(h) a certification of Developer's representations and warranties executed by Developer stating that all of Developer's representations and warranties set forth herein are true and correct as of and as if made on the Closing Date;

(i) copies of all (i) Permits, and (ii) Approvals, including, if required, approval of the Project by the Historic Preservation Review Board;

(j) a copy of the fully executed First Source Agreement and the CBE Agreement;

(k) the following documents evidencing the due organization and authority of Developer to enter into, join and consummate this Agreement and the transactions contemplated herein:

(i) The organizational documents and a current certificate of good standing issued by the District of Columbia;

(ii) Authorizing resolutions, in form and content reasonably satisfactory to District, demonstrating the authority of the entity and of the Person executing each document on behalf of Developer in connection with this Agreement and development of the Project;

(iii) Evidence of satisfactory liability, casualty and builder's risk insurance policies in the amounts, and with such insurance companies, as required in Article 11 of this Agreement;

(iv) Any financial statements of Developer that may be requested by District;

(v) If requested by District, an opinion of counsel that Developer is validly organized, existing and in good standing in the District of Columbia, that Developer has the full authority and legal right to carry out the terms of this Agreement and the documents to be recorded in the Land Records, that Developer has taken all actions to authorize the execution, delivery, and performance of said documents and any other document relating thereto in accordance with their respective terms, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of Developer or any contract or agreement to which Developer is a party or by which it is bound.

(l) Any and all other deliveries required from District on the Closing Date under this Agreement and such other documents and instruments as are customary and as may be reasonably requested by District or Settlement Agent to effectuate the transactions contemplated by this Agreement.

6.2.3 On the Closing Date, Settlement Agent shall record and distribute documents and funds in accordance with closing instructions provided by the Parties so long as they are consistent with this Agreement.

6.3 RECORDATION OF CLOSING DOCUMENTS; CLOSING COSTS

6.3.1 At Closing, Settlement Agent shall file for recordation among the Land Records the Memorandum of Ground Lease, the Construction and Use Covenant and the Affordability Covenant, which documents shall be recorded in the Land Records prior to any documents related to the financing obtained by Developer.

6.3.2 At Closing, Developer shall be responsible for and pay all costs pertaining to the transfer and financing of the Property, including, without limitation,: (1) title search costs, (2) title insurance premiums and endorsement charges, (3) survey costs, (4) D.C. Real Estate Deed Recordation Tax, and (5) all Settlement Agent's fees and costs.

ARTICLE 7
DEVELOPMENT OF PROPERTY AND CONSTRUCTION OF IMPROVEMENTS; COVENANTS

7.1 OBLIGATION TO CONSTRUCT IMPROVEMENTS

Developer hereby agrees to develop, construct, use, maintain, and operate the Project in accordance with the requirements contained in the Construction and Use Covenant and the Schedule of Performance. Developer shall cause Commencement of Construction to occur no later than sixty (60) days after the effective date of the Ground Lease. The Improvements shall be constructed in compliance with all Permits and Applicable Law and in a first-class and diligent manner in accordance with industry standards. The cost of developing the Project shall be borne solely by Developer. As further assurance of the above and of the covenants contained in the Construction and Use Covenant, Developer shall cause the Development and Completion Guaranty to be executed by Guarantors on or before Closing.

7.2 ISSUANCE OF PERMITS

Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable agency within the District of Columbia government or other authority. District shall, upon request by Developer, execute applications for such Permits as are required by the District of Columbia government or other authority, at no cost, expense, obligation, or liability to District. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer shall have obtained all Permits for the work in question. Developer shall submit its application for Permits required for excavation, sheeting and shoring for the Project within a period of time that Developer believes in good faith is sufficient to allow issuance of such Permits prior to the date of Closing. From and after the date of Developer's submission of an application for a Permit, Developer shall diligently prosecute such application until receipt. In addition, from and after submission of any such application until issuance of the Permit, Developer shall report Permit status in writing every thirty (30) days to District.

7.3 SITE PREPARATION

Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specifications, including costs associated with excavation, construction of the Improvements, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

7.5 OPPORTUNITY FOR CBEs

In cooperation with District, Developer agrees that it will promote opportunities for businesses certified by DSLBD, or any successor governmental entity, as Certified Business

Enterprises ("**CBEs**") in the equity, development, and construction of the Project consistent with the CBE Agreement entered into between DSLBD and Developer prior to the Effective Date.

7.6 EMPLOYMENT OF DISTRICT RESIDENTS; FIRST SOURCE AGREEMENT

Pursuant to Mayor's Order 83-265, DC Law 5-93, as amended, and DC Law 14-24, Developer recognizes that one of the primary goals of the District of Columbia government is the creation of job opportunities for District of Columbia residents. Accordingly, Developer agrees to enter into a First Source Agreement, prior to Closing, with DOES that shall, among other things, require the Developer to: (i) use diligent efforts to hire and use diligent efforts to require its architects, engineers, consultants, contractors, and subcontractors to hire at least fifty one percent (51%) District of Columbia residents for all new jobs created by the Project, all in accordance with such First Source Employment Agreement and (ii) use diligent efforts to ensure that at least fifty one percent (51%) of apprentices and trainees employed are residents of the District of Columbia and are registered in apprenticeship programs approved by the D.C. Apprenticeship Council. In addition, Developer agrees to enter into a Step-Up Agreement, prior to Closing, with DOES.

7.7 ADUs

Developer agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, and the Affordability Covenant shall contain covenants reflecting the same, that Developer and such successors and assigns shall reserve as ADUs the following Residential Units: (i) initially, four (4) Residential Units may be leased by Developer at market rates, and (ii) of the balance of the Residential Units, eighteen and one half percent (18.5%) of the remaining Residential Units shall be leased to tenants whose income is at or below thirty percent (30%) of AMI and eighty one and one half percent (81.5%) of the remaining Residential Units shall be leased to tenants whose income is between thirty-one percent (31%) and sixty percent (60%) of AMI. By way of example, the Parties acknowledge and agree that, applying such requirements to the total number of Residential Units proposed to be developed in the Project (i.e., 80), Developer shall reserve as ADUs at least 14 of the Residential Units for lease to tenants whose income is at or below thirty percent (30%) of AMI and not less than 62 of the Residential Units for lease to tenants whose income is between thirty-one percent (31%) and sixty percent (60%) of AMI. The remaining number of Residential Units (not more than 4 Residential Units) may be rented by Developer at market rates. Subject to the provisions of the Affordability Covenant, the ADUs shall be distributed proportionately and evenly throughout the Property, will not be aggregated in any particular portion of the Improvements, and may "float". The Affordability Covenant contains other restrictions regarding age of residents.

7.8 "GREEN" BUILDING

Developer shall design, develop and construct the Project, and all portions thereof, in a manner in compliance with the Green Building Act, and pursuant to the Green Communities criteria required by District (collectively, the "**Green Communities Criteria**").

ARTICLE 8
DEFAULTS AND REMEDIES

8.1 DEFAULT

8.1.1 Default by Developer. It shall be deemed a default by Developer if Developer fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from District (except no notice shall be necessary nor shall any cure period apply to Developer's obligation to close on its acquisition of the Property, time being of the essence) (any such uncured default, a "**Developer Default**"). Notwithstanding the foregoing, if a default does not involve the payment of money and cannot reasonably be cured within thirty days (30) days, Developer shall have such additional time as is reasonably necessary, not to exceed an additional forty-five (45) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

8.1.2 Default by District. It shall be deemed a default by District if District fails to perform any obligation or requirement under this Agreement or fails to comply with any term or provision of this Agreement and such default remains uncured for thirty (30) days after receipt of written notice of such failure from Developer (any such uncured default, a "**District Default**"). Notwithstanding the foregoing, if a default cannot reasonably be cured within thirty (30) days, District shall have such additional time as is reasonably necessary, not to exceed an additional thirty (45) days, to cure such default; provided, however, District must commence the cure within the initial thirty (45) day period and diligently pursue completion of such cure thereafter. Notwithstanding the foregoing, in the event of a pre-Closing default, the cure periods provided herein shall not delay the Closing Date and shall terminate on the Closing Date.

8.2 DISTRICT REMEDIES IN THE EVENT OF A DEVELOPER DEFAULT

In the event of Developer Default under this Agreement, District may terminate this Agreement and, as liquidated damages, draw on the Letter of Credit in its full amount, whereupon the Parties shall be released from any further liability or obligation hereunder, except those that expressly survive termination of this Agreement. Upon such termination, all plans and specifications with regard to the development and construction of the Project and all Other Submissions, including, without limitation, the Construction Drawings produced to date and any Permits obtained, shall be automatically assigned to District free and clear of all liens and claims for payment.

8.3 DEVELOPER REMEDIES IN THE EVENT OF A DISTRICT DEFAULT

In the event of District Default, Developer may terminate this Agreement whereupon District will release the Letter of Credit to Developer and the Parties shall be released from any further liability or obligation hereunder except those that expressly survive termination of this Agreement.

8.4 NO WAIVER BY DELAY; WAIVER

Notwithstanding anything to the contrary contained herein, any delay by any Party in instituting or prosecuting any actions or proceedings with respect to a default by the other hereunder or otherwise asserting its rights or pursuing its remedies under this Article, shall not operate as a waiver of such rights or to deprive such Party of or limit such rights in any way (it being the intent of this provision that neither Party shall be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by either Party hereto must be made in writing. Any waiver in fact made with respect to any specific default under this Section shall not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

8.5 RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth in this Article are the sole and exclusive remedies of the Parties for a default hereunder prior to the Closing.

ARTICLE 9
FINANCIAL PROVISIONS

9.1 PROJECT FUNDING PLAN

As of the Effective Date, Developer has provided to District its initial plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources, affordable housing financing, grant funds advanced pursuant to the Grant Agreement, Debt Financing and any Equity Investment), which plan is attached hereto as **Exhibit H** (such plan, as may be modified from time to time in accordance with this Agreement, being the "**Project Funding Plan**"). Developer shall not modify the Project Funding Plan without the prior approval of District. Developer shall use best efforts to arrange financing for the Project, without the requirement of use of any grant or loan from District in addition to funds advanced pursuant to the Grant Agreement. If by that date which is one (1) year subsequent to the Effective Date, Developer is unsuccessful in obtaining financing for the Project, after utilizing best efforts to do so, and Developer cannot deliver to the District a final Project Funding Plan which shows full funding of all of the costs for developing the Project, then by written notice to District the Developer shall have the right to terminate this Agreement, in which event neither District nor Developer shall have any rights each to the other under this Agreement except for those terms or conditions which specifically survive the termination of this Agreement, in which event District shall have the right to retain Deposits previously delivered to District and shall not be obligated to return such Deposits to the Developer. Notwithstanding the above, if, after exercising diligent best efforts, Developer is unable to arrange financing from lenders and equity investors sufficient to fund the construction of the Project, and provided that

Developer has made timely application to the District for a loan or loans by the District to fund such shortfall in required financing, and should the District have located sufficient funds to lend to Developer to fund such shortfall in financing (it being understood and agreed that the District shall not otherwise be obligated to loan any such funds to Developer), and the District shall have agreed to loan to Developer such funds, then in the event that the District fails to proceed to closing on any such loan or loans, and Developer terminates this Agreement since it cannot obtain sufficient financing to construct the Project and thus complete the Project Funding Plan, then in such event District shall return the Deposits to Developer.

9.2 DEBT FINANCING AND EQUITY INVESTMENT

9.2.1 Beginning at Closing (and as further provided in the Ground Lease) Developer shall not obtain any Debt Financing or engage in any other transaction, including any Equity Investment, that shall create a Mortgage or other encumbrance or lien upon the Property or Developer's interest in the leasehold, or include sale of membership interests in Developer, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property, without the prior written approval of District, in its sole and absolute discretion. Notwithstanding the foregoing, the identity of all funding sources, and the structure of any proposed Equity Investment (which may involve the assignment of membership interests in the Developer) set forth on the attached Project Funding Plan shall be deemed approved by District.

9.2.2 Any such Debt Financing or Mortgage shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget and to the payment of the rent due under the Ground Lease; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distributions to equity holders or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation; and (ii) the amount thereof, together with all other funds available to the Developer shall be sufficient to complete construction of the Project.

9.2.3 At least thirty (30) days prior to Closing, Developer shall submit to District, for the purpose of obtaining District's approval of any such Debt Financing, Mortgage or Equity Investment, such documents as District may reasonably request, including, but not limited, copies of:

(a) The commitment or agreement between Developer and the holder of such Debt Financing or Mortgage, or provider of such Equity Investment, certified by Developer to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing or Equity Investment, certified by Developer to be true and accurate; and

(c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the Debt Financing, and a copy of any amended organizational documents of Borrower or other loan documents related to the Equity Investment.

9.3. NO PUBLIC FUNDING

District will cooperate with Developer in connection with Developer's proposed financing of the Project pursuant to the Project Funding Plan, and any modifications thereto approved by District, and District will coordinate its activities with the activities of Developer, the lenders of Developer extending loans for the development of the Project, and potential investors in connection with the Equity Investment; provided, however, that under no circumstances whatsoever shall the cooperation or coordination activities of District described in this Section 9.3 be deemed to be governed by any standards of "good faith", "commercial reasonable efforts", "governmental reasonable efforts", "best efforts" or any similar or like standards; and, provided, further, that District will, however, reasonably consider proposed modifications to the Ground Lease, the Construction and Use Covenant and the Affordability Covenant proposed by lenders or potential investors in connection with the Equity Investment, provided that such proposed modifications: (i) are customary in the industry, (ii) comply generally with the lender protection provisions currently set forth in such documents, and (iii) are reasonable. Under no circumstances is the District obligated to extend any loan to Developer or grant any funds to Developer in connection with the financing of the Project by Developer, and District shall incur no liability whatsoever should Developer fail to obtain or close on financing for the Project. Even though District incurs no financial obligations under this Agreement, the activities of District remain subject at all times to the Anti-Deficiency Laws, as further set forth in Section 13.16.1 hereof.

9.4 PROJECT BUDGET

9.4.1 As of the Effective Date, Developer has provided to District its initial Project Budget, which is attached hereto as **Exhibit I** and incorporated herein.

9.4.2 Prior to the Closing Date, Developer shall review its initial Project Budget and, if necessary, submit to District a revised Project Budget for District's review and approval. Upon approval by District, such revised Project Budget shall be the "**Final Project Budget**". Such Final Project Budget shall be attached as an Exhibit to the Construction and Use Covenant.

9.4.3 Developer shall not modify the Final Project Budget without the prior approval of District.

ARTICLE 10
ASSIGNMENT AND TRANSFER

10.1 ASSIGNMENT

Developer represents, warrants, covenants, and agrees, for itself and its successors and assigns, that Developer (or any successor in interest thereof) shall not assign its rights under this Agreement, or delegate its obligations under this Agreement, without District's prior written approval, which may be granted or denied in District's sole discretion.

10.2 TRANSFER

In addition to the restrictions contained in the foregoing Section 10.1, neither Developer nor any Member of Developer (including any successors in interest of Developer or its Members) shall cause or suffer to be made any assignment, sale, conveyance or other transfer, or make any contract or agreement to do any of the same, whether directly or indirectly, of the membership interests of Developer. Notwithstanding the above, Developer shall be permitted to transfer up to 99.9% of the membership interests in Developer to third party investors pursuant to the terms of the Equity Investment as provided in the Project Funding Plan, provided that direct or indirect control of Developer by the present members of Developer does not change, and the identity of the managing member of Developer does not change.

10.3 NO UNREASONABLE RESTRAINT

Developer hereby acknowledges and agrees that the restrictions on transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to transfer or otherwise alienate the Property or its rights under this Agreement. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

ARTICLE 11
INSURANCE OBLIGATIONS; INDEMNIFICATION

11.1 INSURANCE OBLIGATIONS

11.1.1 Insurance Coverage. During the periods identified below, and in addition to any insurance policies required under the terms of the Construction and Use Covenant, Developer shall carry and maintain in full force and effect the following insurance policies:

(a) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and/or cause its contractor to maintain automobile liability insurance and commercial general liability insurance policies written so that each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars ($3,000,000.00) per occurrence, of which at least one million dollars ($1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided, however, that the foregoing statement as to the amount of insurance Developer is required to carry shall not be construed as any limitation on Developer's liability under this Agreement. The foregoing limits may be increased by District from time to time, in its reasonable discretion.

(b) Workers' Compensation Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain and cause its general

contractor and any subcontractors to maintain workers' compensation insurance in such amounts as required by Applicable Law.

(c) Professional Liability Insurance - During development of the Project, Developer shall cause Architect and every engineer or other professional who will perform services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical and mechanical engineers with a deductible acceptable to District.

(d) Contractor's Pollution Legal Liability Insurance - At all times after the Effective Date of this Agreement until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall not remove, store, transport, or dispose of demolition debris, hazardous waste or contaminated soil, without first obtaining (or causing its contractor to obtain) a Contractor's Pollution Legal Liability Insurance Policy covering Developer's liability during such activities. The policy shall include such coverage for bodily injury, personal injury, loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials, or other irritants, contaminants, or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual or sudden and accidental.

11.1.2 General Policy Requirements. Developer shall name District as an additional insured under all policies of liability insurance identified above. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies shall include a waiver of subrogation endorsement. All insurance policies required pursuant to this Section 10.1 shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. Prior to any entry onto the Property at any time pursuant to this Agreement, Developer shall furnish to District certificates of insurance (or copies of the policies if requested by District) together with satisfactory evidence of payment of premiums for such policies. The policies shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

11.2 INDEMNIFICATION

Developer shall indemnify, defend, and hold harmless District from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer, its Members, agents, employees, or

contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) due solely to the gross negligence or willful misconduct of District. The obligations of Developer under this Section shall survive Closing or the earlier termination of this Agreement.

ARTICLE 12
NOTICES

12.1 TO DISTRICT

Any notices given under this Agreement shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to District at the following addresses:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20001
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

The Office of the Attorney General for the District of Columbia
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005
Attn: Deputy Attorney General, Commercial Division

12.2 TO DEVELOPER

Any notices given under this Agreement shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses:

MM Washington Redevelopment Partners, LLC
c/o MissionFirst Development, LLC
1330 New Hampshire Avenue, NW, Suite 116
Washington, D.C. 20036
Attention: Sarah Constant

With a copy to:

Nolan Sheehan Patten LLLP
50 Federal Street, 8th Floor

Boston, MA 02110
Attn: Stephen M. Nolan, Esq.

Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; or (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

ARTICLE 13
MISCELLANEOUS

13.1 PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS

Developer, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its being or having become a person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of this Agreement.

13.2 FORCE MAJEURE

Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default under this Agreement with respect to their respective obligations to prepare the Property for development, or convey the Property, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) the Party seeking the benefit of this Section 13.2 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, the other Party thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation. Force Majeure delays shall not delay the Closing Date and shall not apply to any obligation to pay money.

13.3 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

No official or employee of District shall participate in any decision relating to this Agreement which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder. Further, no employee, officer, director, or shareholder of Developer shall be personally liable to District in the event of any default or breach by Developer or for any amount which may become due to District or on account of any obligations hereunder.

13.4 SURVIVAL; PROVISIONS NOT MERGED WITH DEED

Unless expressly stated otherwise herein, the provisions of this Agreement are intended to survive and shall not merge with the provisions of the Ground Lease.

13.5 TITLES OF ARTICLES AND SECTIONS

Titles and captions of the several parts, articles, and sections of this Agreement are inserted for convenient reference only and shall be disregarded in construing or interpreting Agreement provisions.

13.6 SINGULAR AND PLURAL USAGE; GENDER

Whenever the sense of this Agreement so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

13.7 LAW APPLICABLE; FORUM FOR DISPUTES

This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Developer irrevocably submit to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Agreement or any transaction contemplated hereby. District and Developer irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

13.8 ENTIRE AGREEMENT; RECITALS; EXHIBITS

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. The Recitals of this Agreement are incorporated herein by this reference and are made a substantive

part of the agreements between the Parties. All Exhibits are incorporated herein by reference, whether or not so stated. In the event of any conflict between the Exhibits and this Agreement, this Agreement shall control.

13.9 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument. Execution and delivery of this Agreement by facsimile shall be sufficient for all purposes and shall be binding on any Person who so executes.

13.10 TIME OF PERFORMANCE

All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. A performance date which falls on a Saturday, Sunday, or District holiday is automatically extended to the next Business Day.

13.11 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of, the successors and assigns of District and Developer, and where the term "Developer" or "District" is used in this Agreement, it shall mean and include their respective successors and assigns.

13.12 THIRD PARTY BENEFICIARY

No Person shall be a third party beneficiary of this Agreement.

13.13 WAIVER OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.14 FURTHER ASSURANCES

Each Party agrees to execute and deliver to the other Party such additional documents and instruments as the other Party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

13.15 MODIFICATIONS AND AMENDMENTS

None of the terms or provisions of this Agreement may be changed, waived, modified, or removed except by an instrument in writing executed by the Party or Parties against which enforcement of the change, waiver, modification, or removal is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

13.16 ANTI-DEFICIENCY LIMITATION; AUTHORITY

13.16.1 Though no financial obligations on the part of District are anticipated, Developer acknowledges that District is not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that District's authority to make such obligations is and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act (collectively, the "**Anti-Deficiency Laws**".)

13.16.2 Developer acknowledges and agrees that any unauthorized act by District is void. It is Developer's obligation to accurately ascertain the extent of District's authority.

13.17 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Law, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.18 TIME OF THE ESSENCE; STANDARD OF PERFORMANCE

Time is of the essence with respect to all matters set forth in this Agreement. For all deadlines set forth in this Agreement, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

13.19 NO PARTNERSHIP

Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

13.20 EACH PARTY TO BEAR ITS OWN COSTS

Each Party shall bear its own costs and expenses incurred in connection with the negotiation of this Agreement and the performance of such Party's duties and obligations hereunder.

IN WITNESS WHEREOF, District and Developer have each caused these presents to be signed, acknowledged and delivered in its name by its duly authorized representative.

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
Name: Valerie-Joy Santos
Title: Deputy Mayor for Planning and Economic Development

Approved as to legal sufficiency:

D.C. Office of the Attorney General for the District of Columbia

By: _____
Assistant Attorney General
Date: October 26, 2010

MM WASHINGTON REDEVELOPMENT PARTNERS LLC, a District of Columbia limited Liability company

By: MM Washington Manager LLC, its manager

By: Mission First Housing Development Corporation, Inc., its manager

By: _____
Sarah Constant, Managing Director

Exhibits:

Exhibit A – Legal Description of the Property
Exhibit B – Form of Ground Lease
Exhibit C – Construction and Use Covenant
Exhibit D – Affordability Covenant
Exhibit E – Form of Letter of Credit
Exhibit F – Development and Completion Guaranty
Exhibit G – Schedule of Performance
Exhibit H – Project Funding Plan
Exhibit I – Project Budget
Exhibit J-- ADA Certificate
Exhibit K—Form of Promissory Note (Ground Rent)

Exhibit A

[Legal Description of the Property]

[The Southerly portion of Lot 0866 in Square 0616 (after subdivision), currently commonly known as 44 P Street, NW, Washington, D.C.]

Exhibit B

GROUND LEASE

among

DISTRICT OF COLUMBIA

as Landlord

and

MM WASHINGTON REDEVELOPMENT PARTNERS LLC

as Tenant

Dated as of _____ ____, 20__

TABLE OF CONTENTS

GROUND LEASE

THIS GROUND LEASE (this "**Lease**"), dated as of _____ ____, 201___, is entered into by and among the **DISTRICT OF COLUMBIA** (the "**District**"), a public body municipal and corporate acting in its own name, and **MM WASHINGTON REDEVELOPMENT PARTNERS LLC** ("**Tenant**"), a District of Columbia limited liability company.

RECITALS:

A. District is the fee simple owner of the parcel of real property located at 27 O Street NW, in Washington, D.C., known for tax and assessment purposes as Lot ____ in Square ____, and further described in **Exhibit A**, attached hereto and incorporated herein ("**Land**").

B. The disposition of the Land by ground lease from the District to Tenant was approved on July 16, 2010 by the Council of the District of Columbia pursuant to the MM Washington High School Disposition Approval Resolution of 2010 and the MM Washington High School Surplus Declaration and Approval Resolution of 2010 (collectively, the "**Resolutions**").

C. Tenant desires to lease the Land from District, together with: (i) any and all improvements currently existing and located thereon, and the Project Improvements and Alterations constructed thereon during the term of this Lease; and (ii) all other appurtenances, rights, easements, rights-of-way, tenements and hereditaments incident thereto, including all development rights and entitlements (all of the foregoing rights and interests are hereinafter sometimes referred to as the "**Leased Premises**").

D. District and Tenant entered into a Disposition and Development Agreement (by Ground Lease), effective _____, 201___ (the "**Agreement**"), pursuant to which District agreed to lease the Leased Premises to Tenant, in accordance with terms and conditions of this Lease, the Construction Covenant and the Affordable Housing Covenant, as applicable.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the District and Tenant hereby agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the capitalized terms set forth below have the following meanings:

Additional Rent shall have the meaning set forth in Section 4.2.

Affiliate means with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence.

Affordability Covenant shall mean that Affordable Housing Covenant dated as of even date hereof with respect to the Leased Premises and recorded among the Land Records.

Agreement shall have the meaning set forth in the Recitals of this Lease.

Alterations shall have the meaning as described in Section 8.1.

Applicable Law means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

Architect shall have the meaning ascribed to it in the Construction Covenant.

Basic Rent shall have the meaning set forth in Section 4.1.

Building Index shall have the meaning as defined in Section 12.8.2.

Business Days means Monday through Friday, inclusive, other than holidays recognized by the District government.

Casualty Restoration shall have the meaning as defined in Section 14.12(a).

CBE shall mean a Person that has been issued a certificate of registration by DSLBD pursuant to the CBE Act.

CBE Act shall mean the *Small, Local, and Disadvantaged Business Development and Assistance Act of 2005*, D.C. Law 16-33, as amended (codified at D.C. Official Code §§ 2-218.01 et seq.).

CBE Agreement shall mean the agreement in customary form between Tenant and DSLBD regarding the utilization and participation of CBEs in connection with the development and operation of the Project.

Commencement Date shall mean the date first written above, which shall be the date of the last Party to sign this Lease as set forth on the signature pages attached hereto, provided that all Parties shall have executed and delivered this Lease to one another.

Construction Covenant means that certain Construction Covenant dated as of even date hereof with respect to the Leased Premises and recorded among the Land Records.

Construction Work shall mean any construction work performed after District's issuance of the Final Certificate of Completion of the Project Improvements under any provision of this Lease, including, without limitation, a Casualty Restoration, Alteration or other construction work performed in connection with the use, maintenance or operation of the Leased Premises.

Control means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners or Persons exercising similar authority with respect to the subject Person. The terms "**Control**," "**Controlling**," "**Controlled by**" or "**under common Control with**" shall have meanings correlative thereto.

CPI Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, 2008 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics. If at any time the CPI Index shall be discontinued, District shall select a substitute index being an existing official index published by the Bureau of Labor Statistics or its successors or another, similar governmental agency, which index is most nearly equivalent to the CPI Index.

Default shall mean any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Lease) constitute, an Event of Default.

Default Notice shall have the meaning set forth in Section 9.1(b).

Default Rate means the annual rate of interest that is the lesser of (i) twelve percent (12%) or (ii) the maximum rate allowed by Applicable Law.

Designee shall mean any Person (including, without limitation, an Affiliate of a Leasehold Mortgagee) that is not a Prohibited Person or an Affiliate of Tenant and that is the designee or nominee of a Leasehold Mortgagee for the purposes of a Foreclosure Transfer.

District shall mean the District of Columbia, a public body, municipal and corporate.

District Indemnified Parties shall mean, collectively, the District, including, without limitation, any agencies, instrumentalities and departments thereof, and its elected and appointed officials (including, without limitation, the Mayor and the Council), officers, employees (including contract employees), assigns, and Affiliates of any of them.

DOES shall mean the District of Columbia Department of Employment Services.

DSLBD shall mean the District of Columbia Department of Small and Local Business Development.

Environmental Condition shall mean any condition during the Lease Term with respect to the Environment on or off the Leased Premises, whether or not yet discovered, which could or does result in any Environmental Damages, including any condition resulting from the operation of the Project or that of any other property in the vicinity of the Leased Premises or any activity or operation formerly conducted by any Person on or off the Leased Premises.

Environmental Damages shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the remediation or mitigation of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work.

Environmental Laws means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

Equity Interest shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar

entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

Event of Default shall have the meaning set forth in Section 9.1.

Expiration Date shall mean that date immediately preceding the ninety-ninth (99th) anniversary of the Commencement Date.

Final Certificate of Completion is that certificate issued by District pursuant to the Construction Covenant.

First Source Agreement shall mean the First Source Employment Agreement between DOES and Tenant entered into prior to this Lease.

Force Majeure Event is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Commencement Date, so long as such act or event (i) is not within the reasonable control of the Tenant, Tenant Agents, or its Members; (ii) is not due to the fault or negligence of Tenant, Tenant Agents, or its Members; (iii) the effect of which is not reasonably foreseeable and avoidable by the Tenant, Tenant Agents, or its Members or District in the event District's claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Tenant or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or Tenant's financial condition, (B) changes in market conditions such that action as contemplated by this Lease is no longer practicable under the circumstances, or (C) the acts or omissions of a general contractor, its subcontractors, or any of Tenant's Agents or Members. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure Event, the time or times for performance of the obligations of District or Tenant shall be extended for the period of the Force Majeure Event; provided, however, that (a) the party seeking the benefit of this relief shall, within ten (10) Business Days after it has a reasonable basis to believe that the beginning of any such Force Majeure Event has commenced, have first notified the other Party thereof in writing of the cause or causes thereof, with supporting documentation, (b) the Force Majeure Event and the effects thereof are not the result of the negligence, wrongdoing or failure to perform under this Lease of the party seeking the delay, and (c) the party seeking the delay must use commercially reasonable to minimize the delay. If any party requests any extension of the date of completion of any obligation hereunder due to a Force Majeure Event, it shall be the responsibility of such party to reasonably demonstrate that the Force Majeure Event is the cause of the delay.

Foreclosure Transfer shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Leasehold Mortgage, or any transfer, sale or

assignment of any or all of the Leasehold Estate, or any other transfer, sale or assignment of all or any part of the Leasehold Estate by judicial or other proceedings under, pursuant or pertaining to a Leasehold Mortgage, or by virtue of the exercise of any power or right contained in a Leasehold Mortgage, or by assignment or other conveyance-in-lieu of foreclosure or other action in enforcement of a Leasehold Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Tenant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interests in Tenant, or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant, or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant by virtue of, or pursuant to, any right or power contained in a Leasehold Mortgage or in any other document or instrument evidencing or securing a loan secured by a Leasehold Mortgage, or by deed, assignment or other conveyance of some or all of such Equity Interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the Parties that the term "Foreclosure Transfer" shall be given the broadest possible interpretation to cover, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Leasehold Estate, some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant following an uncured default under a Leasehold Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Leasehold Mortgage)): (x) to a Leasehold Mortgagee or its Designee or Foreclosure Transferee; or (y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant from a Leasehold Mortgagee after such Leasehold Mortgagee has purchased or otherwise acquired some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant in a Foreclosure Transfer described in the immediately preceding clause (x).

Foreclosure Transferee shall mean (x) any Person (including, where appropriate and without limitation, a Leasehold Mortgagee) that is not a Prohibited Person and that acquires some or all of the Leasehold Estate, or some or all of the Equity Interests in Tenant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Tenant pursuant to a Foreclosure Transfer, or (y) any Person not already described in the immediately preceding clause (x) that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Leasehold Estate or some or all of the Equity Interests in Tenant as a result of any action whatsoever in enforcement (or in lieu thereof) of any power or right granted by, or existing under, a Leasehold Mortgage.

Governmental Authority shall mean any national, federal, state, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof, or any court, tribunal, grand jury or arbitrator.

Hazardous Materials means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant"; (c) any petroleum and drilling

fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product and any other substance the presence of which could be detrimental to the Land or hazardous to health or the environment.

Imposition or **Impositions** shall mean the following imposed by a Governmental Authority or any Person under any lien, easement, encumbrance, covenant or restriction affecting the Leased Premises: (1) real property taxes and general and special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district), or any payments in lieu of any taxes or assessments; (2) personal property taxes; (3) water, water meter and sewer rents, rates and charges; (4) excises; (5) levies; (6) license and permit fees; (7) any other governmental levies of general application, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted of any kind whatsoever; (8) service charges of general application with respect to police and fire protection, street and highway maintenance, lighting, sanitation and water supply; (9) fees, assessments or charges payable by District or Tenant under any lien, encumbrance, covenant or restriction affecting the Leased Premises; and (10) any fines, penalties and other similar governmental or other charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

Improvement(s) shall mean any building (including footings and foundations) and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed, above or below grade, upon the Land (whether temporary or permanent), including, but not limited to, the Project Improvements, and any and all Alterations and replacements thereof, additions thereto and substitutions therefor.

Institutional Lender shall mean a Person that is not an Affiliate of Tenant or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) a governmental agency; or (viii) a charitable organization regularly engaged in making loans secured by real estate.

Land shall have the meaning set forth in the Recitals.

Land Records means the property records maintained by the Recorder of Deeds for the District of Columbia.

Lease shall mean this Ground Lease between the District and Tenant.

Lease Term shall have the meaning set forth in Section 3.1.

Leased Premises shall have the meaning set forth in the Recitals.

Leasehold Estate shall mean Tenant's interest in this Lease and the Project Improvements constructed on the Land.

Leasehold Mortgage shall mean any mortgage, deed of trust or other similar security instrument, (including all extensions, spreaders, splitters, consolidations, restatements, replacements, modifications and amendments thereof) made for the benefit of an Institutional Lender in accordance with the terms and provisions of this Lease that secures a loan made to Tenant by a Leasehold Mortgagee and constitutes a lien on the Leasehold Estate.

Leasehold Mortgagee shall mean an Institutional Lender who owns, holds or controls a Leasehold Mortgage.

Management Contract is that certain management agreement by and between Tenant and _____, or a successor approved by District, that provides for the day-to-day operations and management of the Leased Premises.

Management Contract Term is the period of time beginning on the date following issuance of the Final Certificate of Completion and ending five (5) years thereafter.

Member shall mean any Person with an ownership interest in Tenant.

Net Insurance Proceeds shall mean the actual amount of insurance proceeds paid following a fire or other insured casualty.

Notice shall have the meaning set forth in Section 16.8.

Operating Agreement means that certain Operating Agreement by and between the Members of Tenant dated _____.

Parties shall mean the District and Tenant.

Permitted Materials means any Hazardous Materials that are reasonably and customarily required for the conduct of Tenant's operation of the Leased Premises as a use permitted under this Lease.

Permitted Mortgage shall have the meaning set forth in Section 14.3.2.

Permitted Mortgagee means an Institutional Lender who owns, holds, controls a Permitted Mortgage.

Permitted Uses shall mean the adaptive re-use development of the Property, including no less than 80 units of senior residential housing (including at least 76 of such senior residential units to be leased to low and moderate income tenants as more particularly set forth in the Affordability Covenant) and approximately 15,000 square feet of programmable community space, all as more particularly set forth in the Permitted Uses Plan (as such term is defined in the Agreement).

Person shall mean any individual, limited liability company, partnership, corporation, association, business, trust, or other entity.

Prohibited Person shall mean any of the following Persons: (A) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Laws concerning organized crime; or (B) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or (C) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (E) Any Person suspended or debarred by HUD or by the District of Columbia government; or (F) Any Affiliate of any of the Persons described in paragraphs (A) through (E) above.

Prohibited Uses means the uses of the Leased Premises by Tenant that are prohibited under Section 2.3.1.

Project Funding Plan means the Tenant's funding plan that describes the sources and uses of funds for the Project and the methods for obtaining such funds, as approved by District, and any modifications thereto that have been approved by District, which plan is attached as Exhibit H to the Agreement.

Project Improvements means those improvements constructed on the Land pursuant to the Construction Covenant.

Promissory Note (Ground Lease) means the Promissory Note (Ground Lease) in the original principal amount of $2,000,000.00 in the form attached as Exhibit K to the Agreement.

Release shall mean any releasing, seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the Environment.

Replacement Value shall have the meaning as defined in Section 14.8(a).

Rent shall mean the Basic Rent and the Additional Rent.

Restricted Period shall mean that period of time beginning on the Commencement Date and ending two (2) years after the Stabilization Date.

Significant Alteration shall mean any Alteration (or series of related Alterations) that (i) changes the exterior design, the massing, or the interior layout of the Improvements; (ii) changes or modifies the structural integrity of the Improvements; (iii) changes the quality of material or finishes used in the Improvements; or (iv) has an estimated cost of more than $100,000.00 in the aggregate, as adjusted pursuant to the CPI Index.

Stabilization Date shall mean, following issuance of the Final Certificate of Completion, the first day on which at least one hundred percent (100%) of the affordable residential units in the Leased Premises have been rented to Qualified Tenants (as such term is defined in the Affordability Covenant).

Sublease shall mean any sublease of a portion of the Improvements in the ordinary course of business, and any subsequent amendments or modifications thereto, which sublease shall (a) contain or incorporate all of the terms, conditions and provisions of this Lease, (b) be subject and subordinate to this Lease, and (c) shall be otherwise acceptable to District.

Substantial Controlling Interest shall mean the ownership of greater than 50% of the Equity Interests in a Person and the ownership of greater than 50% of the votes necessary to elect a majority of the Board of Directors or other governing body of such Person.

Tenant means MM Washington Redevelopment Partners LLC, and its successors and authorized assigns under this Lease.

Tenant Agents mean the Tenant's agents, employees, consultants, contractors, and representatives.

Transferee means purchaser, assignee, transferee or sublessee as a result of a Transfer.

Transfer means any sale, assignment, conveyance, lease, sublease, trust, power, encumbrance or other transfer (whether voluntary, involuntary or by operation of law) of this Lease, the Leased Premises, Improvements, or the Leasehold Estate, or of any portion of any of the foregoing, or of

any interest in any of the foregoing, or any contract or agreement to do any of the same. As used in this Lease, a Transfer shall also be deemed to have occurred if: (i) in a single transaction or a series of transactions (including without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is any decrease in the percentage of ownership interests in Tenant held by any Member or (ii) there is a change in Control of Tenant or a change in Control of any Member from that existing as of the Commencement Date.

ARTICLE II
LEASE OF LEASED PREMISES

2.1 Lease. In consideration of the Rent, terms, covenants, and agreements hereinafter set forth on the part of Tenant and District hereby grant, demise, and let to Tenant, and Tenant hereby takes and leases from District, on the terms, covenants, and agreements hereinafter provided, the Leased Premises to have and to hold for and during the Lease Term.

2.2 Use.

2.2.1 *Continuous Legal Use.* Throughout the Lease Term, Tenant shall use and operate the Leased Premises as required by the terms of this Lease. In any event, the Leased Premises shall be used only in accordance with the applicable Certificate of Occupancy, as it may be amended.

2.2.2 *Scope of Use for the Leased Premises.* Prior to Final Completion (as defined in the Construction Covenant), Tenant shall use the Leased Premises in accordance with the Construction Covenant. Tenant shall, from and after Final Completion, actively and continuously use and operate the Leased Premises for the Permitted Uses. Notwithstanding the preceding sentence, Tenant reserves the right to close or restrict access to any portion of the Leased Premises in connection with Alterations or repairs related to Casualty Restoration, or condemnation or maintenance work, in each case undertaken in accordance with the provisions of this Lease or to such extent as may, in the reasonable opinion of Tenant's counsel, be legally necessary to prevent a dedication thereof or the accrual of prescriptive rights to any Person or Persons.

2.3 Prohibited Uses.

2.3.1 Tenant shall not use or occupy the Leased Premises or any part thereof, and neither permit nor knowingly suffer the Leased Premises or any party thereof to be used or occupied, for any of the following ("**Prohibited Uses**"):

(i) for any unlawful or illegal business, use or purpose;

(ii) any illegal gambling;

(iii) for any use which is a public nuisance;

(iv) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises; or

(v) any use inconsistent with Section 2.2.

2.3.2 Immediately upon its discovery of any Prohibited Use, Tenant shall take all reasonably necessary steps, legal and equitable, to compel discontinuance of such business or use, including, if necessary, the removal from the Leased Premises of any subtenants, licensees, invitees or concessionaires, subject to Applicable Laws.

2.4 Quiet Enjoyment. Except during the continuance of a Default, Tenant shall have the right to quiet enjoyment of the Leased Premises and its other rights under this Lease without hindrance or interference by District or by any Person lawfully claiming through or under the District.

ARTICLE III
TERM

3.1 Term of Lease. The term of this Lease (the "**Lease Term**") shall commence on the Commencement Date and continue until the earlier of (i) 11:59 p.m., Washington D.C. time, on the Expiration Date or (ii) the effective time of a termination in accordance with Section 3.2. On the Commencement Date, the District shall deliver possession of the Leased Premises to Tenant.

3.2 Early Termination. The Lease Term shall terminate prior to the Expiration Date upon the occurrence of (i) written agreement of the Parties to terminate this Lease; or (ii) termination of this Lease in accordance with the provisions hereof.

3.3 Return of Leased Premises. Upon the Expiration Date or in the event of termination pursuant to Section 3.2, Tenant shall peaceably surrender possession of the Leased Premises, including all Improvements, to the District.

3.4 Holding Over. If Tenant or any Person acting by or through Tenant shall retain possession of the Leased Premises after expiration of the Lease Term, Tenant shall be a tenant at sufferance. For the period during which Tenant or such Person so retains possession of the Leased Premises, Tenant shall pay Rent in an annual amount equal to the sum of ten percent (10%) of the then appraised value of the fee interest in the Land, as determined by the District in its sole and absolute discretion. Tenant shall pay as Additional Rent any costs and expenses of an appraisal incurred by the District in connection with this Section 3.4. Tenant shall indemnify the District Indemnified Parties and hold them harmless from and against all liabilities, damages, obligations, losses and expenses sustained or incurred by them by reason of such retention of possession of the Leased Premises by Tenant or such Person, except to the extent the same is the result of or arises directly out of the gross negligence or intentional misconduct of the District

Indemnified Parties. If the retention of possession of the Leased Premises is with the written consent of the District, such tenancy shall be from month-to-month and in no event from year-to-year or any period longer than month-to-month. The provisions of this Section 3.4 shall not constitute a waiver by the District of any re-entry rights or remedies of the District available under this Lease. Except as modified by this Section 3.4, all terms and provisions of this Lease shall apply during any holdover period. During any such holdover period, each Party shall give to the other at least thirty (30) days notice to quit the Leased Premises, except in the event of nonpayment of Rent when due, or of the breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days notice to quit being expressly waived. Notwithstanding the foregoing provisions of this Section 3.4, if the District shall desire to regain possession of the Leased Premises promptly at the expiration of the Lease Term or any extension thereof, the District may re-enter and take possession of the Leased Premises by any legal action or process then in force in the District of Columbia.

ARTICLE IV
RENT AND IMPOSITIONS

4.1 Basic Rent. On the Commencement Date of this Lease, Tenant has paid to District the sum of Two Million Dollars ($2,000,000.00) as aggregate minimum basic rent for the Leased Premises for the Term ("**Basic Rent**"), payable by Tenant by execution and delivery to Landlord by Tenant of the Promissory Note (Ground Rent), receipt of which is hereby acknowledged by District, it being understood and agreed that $200,000.00 of the principal amount of the Promissory Note (Ground Rent) is allocable to the Land, and $1,800,000.00 of the principal amount of the Promissory Note (Ground Rent) is allocable to the Improvements.

4.2 Additional Rent. From and after the Commencement Date, and throughout the Term, Tenant shall also pay as additional rent ("**Additional Rent**") all sums, costs, expenses and other payments payable or dischargeable by Tenant under this Lease, including, without limitation, all Impositions.

4.3 No Offsets or Deductions. It is intended that the Rent payable throughout the Lease Term shall be an absolutely net return to District, without offset or deduction and free of any loss, cost, expense, charges, diminution or other deductions whatsoever, and all costs, expenses and obligations of every kind and nature with respect to the Leased Premises shall be the sole and absolute responsibility of Tenant.

4.4 Manner of Payment. Rent and all other amounts payable by Tenant under this Lease to District as Landlord shall be paid in legal tender of the United States of America by, at the election of District, as applicable, with reasonable prior notice to Tenant, wire transfer or check drawn on a United States bank (subject to collection), to District at the applicable address designated herein or at such other address of District as District may designate from time to time by notice to Tenant. The District's acceptance of Rent or other amounts paid under this Lease after the same shall have become due shall excuse a delay in payment by Tenant on a subsequent

occasion. Notwithstanding the foregoing, Tenant shall pay Impositions and Additional Rent (unless directly payable to District pursuant to the terms of this Lease) directly to the applicable taxing or other authority imposing or due same.

4.6 Payment of Impositions.

4.6.1 *Obligation to Pay Impositions.* From and after the Commencement Date, Tenant shall pay, in the manner provided in Section 4.6.2 below, all Impositions that at any time thereafter are assessed, levied, confirmed, imposed upon, or charged to Tenant, the Land or the Leased Premises with respect to (i) the Land, or (ii) the Leased Premises, or (iii) any vault, passageway or space in, over or under any sidewalk or street in front of or adjoining the Leased Premises, or (iv) any other appurtenances of the Leased Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) any document to which Tenant is a party creating or transferring an interest in the Leasehold Estate, by or to Tenant, or (vi) the use and occupancy of the Leased Premises, or (vii) the activities and/or the transactions contemplated by this Lease.

4.6.2 *Payment of Impositions.* Tenant shall arrange to be separately billed for, and shall pay the Impositions to the applicable Governmental Authority assessing or imposing such Imposition. Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty (which is the date of delinquency) directly to the applicable Governmental Authority. However, if by law of the applicable Governmental Authority any Imposition may at the taxpayer's option be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

4.6.3 *Evidence of Payment.* Tenant shall furnish to the District, within fifteen (15) days after the date of the District's request therefor, an official receipt of the appropriate taxing authority or other charging party or other proof reasonably satisfactory to District, evidencing the payment of the Imposition.

4.6.4 *Evidence of Non-Payment.* Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein. Tenant shall, immediately upon receipt of any such certificate, advice or bill, deliver a copy of the same to the District.

4.6.5 *Survival.* The provisions of this Section 4.6 shall survive the expiration of the Lease Term, until any Imposition that may be due and owing under this Lease has been paid in full.

4.6.6 *Contest of Impositions.* Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed, to the extent permitted by Applicable Laws, if, and only as long as: (i) Such contest is commenced within the time period allowed under Applicable Law for the commencement of such contest and Tenant notifies the District in writing of any such contest relating to any Imposition which is payable to the District, including but not limited to any District taxes; and (ii) Neither the Leased Premises nor any part thereof or interest therein would, by reason of such postponement or deferment, be, in the reasonable judgment of the District, in danger of being forfeited to a Governmental Authority.

ARTICLE V
APPLICABLE LAWS

5.1 Compliance with Applicable Laws. During the Lease Term, Tenant shall comply with all Applicable Laws (including, without limitation, Environmental Laws). Without limiting the generality of the foregoing:

(a) Tenant shall maintain and comply with all permits, licenses and other authorizations required by any Governmental Authority for its use of the Leased Premises and for the proper operation, maintenance and repair of the Leased Premises or any part thereof.

(b) Neither Tenant nor any Tenant Party shall use, handle, store, generate, manufacture, transport, discharge, or release any Hazardous Materials in, on or under the Leased Premises, except that Tenant may use, store, handle, transport and dispose of Permitted Materials. Tenant shall promptly notify the District, and provide copies promptly after receipt, of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to compliance or non-compliance with Applicable Laws at the Leased Premises or the use, storage, handling, transportation, disposal, or release of Hazardous Materials in, on or under the Leased Premises by Tenant or a Tenant Party; provided, however, that the District's receipt of any of the foregoing shall in no way create or impose any duty or obligation upon the District to respond thereto. To the extent required by Applicable Laws, Tenant shall, at its sole cost and subject in all respects to the prior written notification to the District thereof, promptly clean up, remove and otherwise fully remediate, in compliance with all Applicable Laws, any Hazardous Materials (other than Permitted Materials) situated in, on, or under the Leased Premises.

(c) If Tenant fails to timely and fully perform any of the work described in the preceding paragraph or if Tenant does not diligently pursue such work, in addition to any other remedies that may be provided in Article IX of this Lease, the District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by the District in connection therewith shall be paid by Tenant. If the District elects to cause the necessary

cleanup, removal or other remedial work to be performed as provided above, there shall be no abatement or reduction of Rent, and Tenant hereby waives any claim or right that it may have to any such reduction or abatement of Rent and for damages for any injury or inconvenience with Tenant's business or loss of occupancy or quiet enjoyment or any other loss occasioned by the performance of such work. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

(d) Upon the expiration or sooner termination of this Lease or Tenant's vacation of the Leased Premises, Tenant shall, at its sole cost, immediately remove and otherwise fully remediate in compliance with all Applicable Laws, all Permitted Materials (including, without limitation, the performance of any necessary investigatory, monitoring, cleanup, removal or other remedial work), all of which remediation shall be subject to the prior written notification to the District thereof. If Tenant fails to timely and fully perform any of the work described in this paragraph, within thirty (30) days following the end of the Lease Term or if Tenant does not diligently pursue such work throughout such thirty (30) day period, in addition to any other remedies that may be provided in Article IX of this Lease, the District may, in its sole discretion and to the exclusion of Tenant, cause the necessary cleanup, removal or other remedial work to be performed and, in such event, all costs and expenses reasonably incurred by the District, in connection therewith, plus interest at the Default Rate from the date incurred by the District until such amounts are paid in full, shall be paid by Tenant. Tenant's obligations hereunder shall survive the expiration or earlier termination of the Lease.

5.2 Right to Contest. Tenant shall have the right, after prior notice to the District, to contest by appropriate legal proceedings, the validity or applicability of any Applicable Laws affecting the Leased Premises. In such circumstances, Tenant shall have the right to delay observance thereof and compliance therewith until such contest is finally determined and is no longer subject to appeal, but only if such action does not subject the District or Tenant to any criminal liability or fine or the Leased Premises to any lien or assessment. Tenant shall indemnify, protect and hold the District harmless from any civil liability or penalty incurred as a result of or otherwise relating to any such actions by Tenant.

ARTICLE VI
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 District's Representations and Warranties. As an inducement to Tenant to enter into this Lease, the District represents and warrants to the Tenant, as of the Commencement Date, as follows:

(a) The District has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under Applicable Law or any commitment, agreement or instrument to which the District is a party or by which it or any of its properties or assets are bound.

(c) The District is the fee owner of the Leased Premises.

(d) There exists no lease, license, assignment, sublease or other transfer of any portion of the Leased Premises as of the date hereof.

(e) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by the District or on the District's behalf.

6.2 Tenant's Representations and Warranties. As an inducement to the District to enter into this Lease, Tenant represents and warrants to the District, as of the Commencement Date, as follows:

(a) Tenant is a limited liability company duly created and validly existing pursuant to the laws of the District of Columbia and is qualified to do business in every jurisdiction where its ownership of property or its conduct of business operations gives rise to the need for such qualification, except to the extent that the failure so to qualify in any particular jurisdiction could not reasonably be expected to result in a material adverse effect on the business or financial condition of Tenant or the ability of Tenant to perform its obligations under this Lease. True, correct and complete copies of the Articles of Organization of Tenant have been certified and delivered to the District on or before the Commencement Date.

(b) Tenant has full right, power and authority to enter into, execute and deliver this Lease and to perform its obligations hereunder.

(c) This Lease has been duly executed and delivered by Tenant and, when duly executed and delivered by the District, shall constitute a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(d) The execution, delivery and performance of this Lease will not conflict with or constitute a breach of or default under any commitment, agreement or instrument to which Tenant is a party or by which it or any of its properties or assets are bound.

(e) The lease of the Leased Premises by Tenant, and Tenant's other undertakings pursuant to this Lease are and will be used for the purpose of developing and operating the Project Improvements, and not for speculation in land holding or any other purpose.

(f) No action, consent or approval of, or registration or filing with or other action by, any Governmental Authority or other Person is or will be required in connection with the execution and delivery by Tenant of this Lease or the assumption and performance by Tenant of

its obligations hereunder, other than the issuance of governmental permits and licenses expected in the ordinary course of business.

(g) No broker, finder, investment banker or other person is entitled, or shall become entitled, to any brokerage, finder's or other fee or commission in connection with this Lease, based upon arrangements made by Tenant or on Tenant's behalf.

(h) Neither Tenant nor any of its Members, or the constituent Members of any of its Members, are the subject debtor under any federal, state or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

(i) Neither Tenant nor any Member or Affiliate of Tenant is a Prohibited Person.

(j) There is not litigation, arbitration, administrative proceeding or other similar proceeding pending or threatened in writing against Tenant or its Members which, if decided adversely to Tenant or its Members, (i) would impair Tenant's ability to enter into and perform its obligations under this Lease, (ii) would materially adversely affect the financial condition or operations of Tenant or its Members, or (iii) the legal existence of Tenant.

6.3 "As Is, Where Is" Lease. Tenant acknowledges that the lease by the District to Tenant of the Leased Premises pursuant to the terms of this Lease is on an "AS-IS, WHERE-IS" basis. Except as otherwise set forth in the Agreement, District makes no representation or warranty, either express or implied, as to: (i) the condition of the Leased Premises, including, but not limited to, the presence or absence of Hazardous Materials at, in, on or under the Leased Premises; (ii) the suitability or fitness of the Leased Premises for any use, or (iii) any Environmental Law, other law or any other matter affecting the use, occupancy or enjoyment of the Leased Premises. By executing this Lease, Tenant shall be deemed to have acknowledged to the District that Tenant has conducted such inspections and tests of the Leased Premises as Tenant deems appropriate and that Tenant is thoroughly acquainted and satisfied with all respects thereof and is leasing the Leased Premises "AS-IS, WHERE-IS". Tenant's acceptance of possession of the Leased Premises pursuant to this Lease shall constitute a waiver and release of the District from any claim or liability pertaining to the condition of the Leased Premises including, without limitation, the existence of any Hazardous Material and/or any other Environmental Condition in, on or about the Leased Premises.

6.4 Management Contracts. Until expiration of the Management Contract Term, Tenant shall not amend, modify or terminate the Management Contract for the Leased Premises or any portion thereof, or enter into any other agreement relating to the management of the Leased Premises or any portion thereof, without District's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. During the term of the Affordability Covenant, any Management Contract(s) shall contain commercially reasonable terms and the following: (a) any compensation for services provided by the managers shall be market-rate and lender-approved and (b) have a term equal to the Management Contract Term. During the term of the

Affordability Covenant, the Management Contract(s) shall be in a form and substance reasonably satisfactory to District. In furtherance of the foregoing, Tenant shall submit to District, for District's review and approval, a draft of any proposed Management Contract not later than thirty (30) days prior to the proposed date of execution thereof.

ARTICLE VII
CONSTRUCTION OF PROJECT IMPROVEMENTS; MAINTENANCE AND REPAIR; UTILITIES

7.1 Construction of Project Improvements.

7.1.1 *Obligation to Construct.* It is understood and agreed that Tenant shall, at its sole cost, risk and expense, construct or cause to be constructed the Project Improvements in accordance with this Lease and the Construction Covenant, with new first-class quality materials and in a first-class and diligent manner, in compliance with Applicable Laws and in accordance with good and workmanlike industry standards.

7.1.2 *No Defense.* Tenant shall not be entitled to any defense to its obligation to construct the Project Improvements (or any part thereof) pursuant to the terms of this Lease based on the failure of any other Person to construct any other improvements within the Leased Premises, nor will Tenant be entitled to any such defense based on any other Person failing to give access to any land or premises to Tenant, notwithstanding that such access may be necessary in order for Tenant to construct the Project Improvements in accordance with this Lease, and Tenant expressly waives any such defenses.

7.2 Maintenance of Leased Premises.

7.2.1 *Maintenance and Repair.* Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe order and condition, however the necessity or desirability therefor may arise, and shall make all such repairs in the most expedient manner and in compliance with Applicable Laws. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Leased Premises.

7.2.2 *Cleaning of Leased Premises.* Tenant shall keep clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances all areas of the Leased Premises.

7.2.3 *Other Areas.* Tenant shall cause the Leased Premises, to be maintained and operated in such a manner that will not directly or indirectly adversely affect, damage or cause injury to the District or any agency or department thereof. Without in any way limiting the first sentence of this Section 7.2.3, Tenant shall promptly rectify any damage or interference caused by Tenant to any improvements, equipment, structures or vegetation outside of the Leased Premises, which is owned or controlled by the District or any agency or department thereof. The provisions of this Section 7.2.3 shall not limit the obligations of Tenant with respect to any other Person or any property of any other Person.

7.2.4 *No Obligation of the District.* The District, as the landlord under this Lease, shall not be required to furnish any services, utilities or facilities whatsoever to the Leased Premises, and the District shall have no duty or obligation to make any alteration, change, improvements, replacement or restoration or repair to the Leased Premises, or to demolish any improvements. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, restoration, maintenance and management of the Leased Premises at all times during the Term.

7.3 Utilities. Tenant, at its sole expense, shall be responsible for handling all aspects associated with utilities affecting the Leased Premises. Such responsibility includes, without limitation, (i) locating, surveying, designing, permitting, installing and constructing any utility systems or facilities to, on or under the Leased Premises, (ii) removing, replacing, relocating, protecting and/or modifying any utilities affecting the Leased Premises, whether such utilities are located at the Leased Premises, or on adjacent property, (iii) maintaining and repairing all utility lines and services to, on or under the Leased Premises, and (iv) paying all costs, together with the applicable District sales tax, for receipt of utility services to, on or under the Leased Premises.

ARTICLE VIII
ALTERATIONS

8.1 Alterations Generally. Tenant may, at any time and from time to time after the District's issuance of the Final Certificate of Completion, at its sole cost and expense, make alterations, additional installations, substitutions, improvements, renovations or betterments (collectively, "**Alterations**) in and to the Leased Premises or any portion thereof provided that:

(a) no Alteration affecting the structural portions of the Project Improvements shall be undertaken except under the supervision of a licensed architect or licensed professional engineer;

(b) the Alterations will not result in a violation of any Applicable Law or require a material change in any certificate of occupancy applicable to the Leased Premises;

(c) the outside appearance of the Leased Premises and the Permitted Uses shall not be materially adversely affected, and the Alterations shall not materially (1) weaken or impair the structure or the Project Improvements, (2) reduce the size of the Improvements, (3) lessen the fair market value of the Leased Premises, or (4) reduce the utility or useful life of the Improvements;

(d) the proper functioning of any of the heating, air conditioning, elevator, plumbing, electrical, sanitary, mechanical and other service or utility systems of the Leased Premises shall not be materially adversely affected;

(e) for any Significant Alteration or series of related Alterations, Tenant shall obtain the prior written consent of the District for such Significant Alterations (or series of related Alterations that amount to a Significant Alteration) in accordance with the provisions of Section 8.2.4 below.

8.2 Performance of Alterations.

8.2.1 *Generally.* The Alterations shall be expeditiously made and completed with new, first-class quality materials and in a first-class and diligent manner. All Alterations shall be performed by a duly licensed and qualified contractor(s) selected by Tenant. Tenant shall, prior to the commencement of such Alterations, provide (i) broad form builders all risk insurance, on a completed value (or reporting form) which insurance shall be effected by policies complying with all of the provisions of Article XII, (ii) appropriate construction performance and the labor and material payment bonds, and (iii) funding for the costs of such Alterations.

8.2.2 *Requirements of Governmental Authorities.* Tenant, at its expense, shall obtain all necessary permits and certificates from Governmental Authorities for the commencement and prosecution of any Alterations and final approval from Governmental Authorities upon completion, promptly deliver copies of the same to District and cause the Alterations to be performed in compliance with all Applicable Laws and requirements of Leasehold Mortgagees and insurers of the Leased Premises, and any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions, and in good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Leased Premises that are being replaced.

8.2.3 *Significant Alterations.* Tenant shall submit to District, for District's review and approval, plans and specifications, and any amendments thereof, showing in reasonable detail any proposed Significant Alteration not less than sixty (60) days before the proposed commencement of such proposed Significant Alteration. Within thirty (30) days after District's receipt of such plans and specifications, District shall notify Tenant of its approval or disapproval thereof. Any Alteration for which consent has been received shall be performed substantially in accordance with the final plans and specifications provided to District, and no material amendments or material additions to the plans and specifications shall be made without the prior consent of District in accordance with the terms hereof.

ARTICLE IX
DEFAULTS AND REMEDIES

9.1 Tenant's Default. Any of the following occurrences, conditions or acts shall constitute an "**Event of Default**" under this Lease, unless caused by a default or breach of District hereunder or, as to obligations of Tenant not involving the payment of Rent or other amounts, by a Force Majeure Event:

(a) if Tenant shall default in making payment when due of any Additional Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) days after District shall have given written notice to Tenant specifying such default and demanding that the same be cured;

(b) if Tenant shall default in the observance or performance of any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) on Tenant's part to be observed or performed (other than the covenants expressly set forth below) and Tenant shall fail to remedy such default within the time period provided herein for the cure thereof; if no such time period is provided then, within thirty (30) days after notice by District of such Default (the "**Default Notice**"), or if such a Default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, Tenant shall (i) within thirty (30) days after the giving of such Default Notice, advise District of Tenant's intention to institute all steps (and from time to time, as reasonably requested by District, Tenant shall advise District of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same without interruption to cure such Default within the shortest reasonably possible time, but in no event longer than ninety (90) days;

(c) Tenant shall admit in writing its inability to pay its debts as they mature or shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise;

(d) Tenant shall be adjudicated bankrupt or insolvent by any court;

(e) involuntary proceedings under any bankruptcy law, insolvency act or similar law for the relief of debtors shall be instituted against Tenant, or a receiver or trustee shall be appointed for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within ninety (90) days after the institution of appointment;

(f) Tenant shall make an assignment for the benefit of creditors or Tenant shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Tenant;

(g) an Event of Default occurs under the Construction Covenant or the Affordability

Covenant;

(h) the levy upon or other execution or the attachment by legal process of the Leasehold Estate or the lawful filing or creation of a lien (unless otherwise permitted pursuant to the terms of this Lease) in respect of any such interest (unless the same is attributable to the acts or omissions of District or any of District's agents, employees, licensees or contractors), which levy, attachment or lien shall not be released, discharged or bonded against within forty-five (45) days following the date Tenant receives notice thereof;

(i) Tenant shall fail to obtain or maintain in effect any insurance required of it under this Lease or the Construction Covenant, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to District of the insurance required to be obtained or maintained by Tenant or its contractors or subcontractors under this Lease or the Construction Covenant in accordance with its terms and conditions, and such failure shall continue for a period of five (5) Business Days after notice of such failure from District;

(j) Tenant assigns this Lease or sublets the Leased Premises or any portion thereof in violation of this Lease;

(k) Tenant shall use or suffer or permit the use of the Leased Premises or any part thereof for any purpose other than those permitted pursuant this Lease; or

(l) Any representation or warranty of Tenant in this Lease shall be materially false when made.

9.2 Remedies for Tenant's Default.

9.2.1 *Legal and Equitable Relief.* District shall be entitled to the extent permitted by Applicable Law, to injunctive relief or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

9.2.2 *Termination.*

(i) This Lease, Lease Term and Leasehold Estate are subject to the limitation that whenever an Event of Default shall have happened and be continuing, District shall have the right, at its sole election, then or thereafter while any such Event of Default shall continue and notwithstanding the fact that District may have some other remedy hereunder or at law or in equity, to give Tenant notice of its intention to terminate this Lease in accordance with the terms of this Lease on a date specified in such notice, which date shall be no earlier than as may be specifically provided in this Lease, or if not so provided, then not less than ten (10) days after the giving of such notice, and upon the date so specified, this Lease and the Leasehold Estate shall expire and terminate with the same force and effect as if the date specified in such notice were the date hereinbefore fixed for the expiration of this Lease, and all rights of Tenant hereunder

shall expire and terminate, and Tenant shall be liable as provided in this Section. If any such notice is given, District shall have, on such date so specified, the right of re-entry and possession of the Leased Premises, and the right to remove all persons and property therefrom and to store such property in a warehouse or elsewhere at the risk and expense, and for the account, of Tenant. Should District elect to re-enter as herein provided or should District take possession pursuant to legal proceedings or pursuant to any notice provided for by Applicable Laws, District may from time to time re-let the Leased Premises or any part thereof for such term or terms and at such rental or rentals and upon such terms and conditions as District, as applicable, may deem advisable, with the right to make alterations therein and repairs thereto. Notwithstanding the foregoing, following an Event of Default, District shall have no obligation to re-let the Leased Premises.

(ii) In the event of any termination of this Lease as provided in this Section, Tenant shall forthwith quit and surrender the Leased Premises to District, and District may, without further notice, enter upon, re-enter, possess and repossess the same by summary proceedings, ejectment or otherwise, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event neither Tenant nor any Person claiming through or under Tenant by virtue of any law or an order of any court shall be entitled to possession or to remain in possession of the Leased Premises but shall forthwith quit and surrender the Leased Premises, and District, at its sole option, shall forthwith, notwithstanding any other provision of this Lease, be entitled to recover from Tenant, as and for liquidated damages, the sum of all Rent and any other amounts payable by Tenant hereunder then due or accrued and unpaid.

9.2.3 *Enforcement of Rights.* Following an Event of Default, District may, at its sole option, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other payments as they become due hereunder. Additionally, District shall be entitled to recover from Tenant all costs of maintenance and preservation of the Leased Premises incurred by District for which Tenant is responsible hereunder.

9.2.4 *No Effect on Indemnification.* Nothing herein shall be deemed to affect the right of District to indemnification as set forth in this Lease.

9.2.5 *District's Right to Cure.* If Tenant shall default in the keeping, observance or performance of any covenant, agreement, term, provision or condition herein contained, District, without thereby waiving such default, may perform but shall not be required to perform the same for the account and at the expense of Tenant. All costs and expenses incurred by District in connection with any such performance for the account of Tenant, and also all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by District in any action or proceeding (including any summary dispossess proceeding) brought by District to enforce any obligation of Tenant under this Lease and/or right of District in or to the Leased Premises, shall be paid by Tenant to District upon demand, as applicable. District shall have a right of entry for purposes of the foregoing, exercise of which right shall be without prejudice to any of their other rights or remedies hereunder.

9.2.6 *Remedy for Noncompliant Mortgagee.* In the event that a mortgagee is not an Institutional Lender or the prior written consent of District has not been secured, District shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin the placement or transfer of such mortgage or any interest therein, it being understood that monetary damages will be inadequate to compensate District for harm resulting from such noncompliance.

9.2.7 *Completion of Improvements.* In the event the construction of the Improvements has not been completed as of the occurrence of any Event of Default, whether or not this Lease or Tenant's right of possession hereunder is terminated, within ten (10) Business Days after occurrence of such Event of Default: (a) Tenant shall deliver all plans, reports, estimates, and models which have been prepared or made with respect to same to District and each of the same shall become the property of District (Tenant hereby agreeing to execute such documentation as District may require to evidence the transfer of the ownership interests in and to such documentation to the extent such interests are transferable or assignable); (b) Tenant shall inform each preparer of all such plans, reports, estimates, and models of transfer in ownership of such person property; and (c) District may take over the completion of the construction of the Improvements or cause the same to be completed, but Tenant shall nevertheless remain liable in damages to District for all loss and damage sustained by District by reason of the failure of Tenant to complete the Improvements in accordance with the terms of this Lease, which loss and damage shall include all sums paid by District for the completion of the Improvements. Whether or not this Lease is terminated or any suit is instituted, Tenant shall be liable for all reasonable costs, fees and expenses incurred by District in pursuit of its remedies hereunder or in recovering possession of the Leased Premises, completing construction of the Improvements, and renting the Leased Premises to others from time to time.

9.2.8 *Waiver by Tenant.* Tenant hereby expressly waives, for itself and all Persons claiming by, through or under it, any right of redemption, re-entry or restoration of the operation of this Lease under any current or future Applicable Laws, including, without limitation, any such right that Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case District shall obtain possession of the Leased Premises as herein provided.

9.2.9 *Late Fee; Accrual of Interest.* Any Rent or other payments due by Tenant or any amounts incurred by District pursuant to the terms of this Lease shall bear interest at the Default Rate beginning on the date such payments were due or incurred by District, as applicable, until paid.

9.2.10 *Attorney's Fees.* District shall be entitled to recover from Tenant the reasonable attorneys' fees and costs incurred by District in enforcing any of its rights and remedies hereunder. In the event District is represented by the Office of the Attorney General for the District of Columbia, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in

any such litigation.

9.3 Remedies Cumulative. No right or remedy herein conferred upon or reserved to District is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing.

9.4 No Waiver. If District shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same or of any other covenant, condition or agreement set forth herein, nor of any of District's rights hereunder. Neither the payment by Tenant of a lesser amount than the Rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent payable hereunder shall be deemed an accord and satisfaction. District may accept the same without prejudice to District's right to recover the balance of such Rent or to pursue any other remedy. During the continuance of any Event of Default, notwithstanding any request or designation by Tenant, District may apply any payment received from Tenant to any payment then due under this Lease. No re-entry by District shall be considered an acceptance of a surrender of this Lease. No delay or failure by District to exercise or enforce any of its rights or remedies or Tenant's obligations (except to the extent a time period is specified in this Lease therefor) shall constitute a waiver of any such or subsequent rights, remedies or obligations. District shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by District. If District waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

9.5 Remedies for the District's Default. If District shall default or fail in the performance of a covenant or agreement on its part to be performed under this Lease, and such default shall not have been cured for a period of thirty (30) days after receipt by District of notice of said default from Tenant, or if such default cannot, with due diligence, be cured within thirty (30) days, and District shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by District, with due diligence within thirty (30) days, that the time period within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence), then Tenant shall have the right to declare a default of this Lease upon notice to District and seek any compensatory damages (other than incidental, consequential, punitive and other special damages, which Tenant expressly waives pursuant to this Lease) which may be available to Tenant in an action; provided, however, that Tenant shall have the right to terminate this Lease only if District shall default or fail in the performance of its covenant of quiet enjoyment and such default is materially adverse to the operation or maintenance of the Project. Any damages and claims against District shall be limited to its interests in the Land.

ARTICLE X
TRANSFER AND SUBLETTING

10.1 Transfer.

10.1.1 *Prior to Expiration of the Restricted Period.* Prior to expiration of the Restricted Period, Tenant shall not cause or suffer to be made a Transfer, in whole or in part (other than a Sublease); provided, however, that such restrictions on Transfers shall not apply to any: (i) deed of trust entered into by Tenant in connection with a proposed loan, or (ii) assignment of membership interests in Tenant in connection with a proposed equity transaction, each of which is generally described in the Project Funding Plan, as it may be amended from time to time with the approval of Landlord.

10.1.2 *After Expiration of the Restricted Period.* Following expiration of the Restricted Period, Tenant shall not cause or suffer to be made a Transfer, in whole or in part (other than a Sublease), without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that such restrictions on Transfers shall not apply to any: (i) deed of trust entered into by Tenant in connection with a proposed loan, or (ii) assignment of membership interests in Tenant in connection with a proposed equity transaction, each of which is generally described in the Project Funding Plan, as it may be amended from time to time with the approval of Landlord.

10.2 District's Approval of Transfer.

10.2.1 *Tenant's Submissions.* If Tenant desires to effect any Transfer which requires the approval or consent of District hereunder, Tenant shall provide and demonstrate to District the following, at least sixty (60) days prior to the proposed effective date of the proposed Transfer:

(a) the name and address of the proposed Transferee and the names and addresses of the individuals that are Members of or Control the proposed Transferee;

(b) a copy of the final negotiated Transfer agreement(s), or, if not available, the terms and conditions of the proposed Transfer;

(c) evidence that the proposed Transferee's operation of the Project will be of a quality and character no less than Tenant's;

(d) evidence of the nature and character of all of the business of the proposed Transferee, showing that as of the date of requesting District's consent to such Transfer, the proposed Transferee is legally entitled (or has a reasonable expectation of becoming legally entitled) to operate the Leased Premises, is not a Prohibited Person, and has sufficient experience owning and/or operating other properties of a similar nature to the Leased Premises;

(e) banking, financial, and other credit information, including, but not limited to, audited financial statements, relating to the proposed Transferee, in reasonably sufficient detail

to enable District to determine that the proposed Transferee can provide financial assurances to satisfy District that the proposed Transferee is financially responsible and able to meet the obligations of Tenant under the Lease; and

(f) any additional information as District may reasonably request.

10.2.2 *Submissions Upon District's Approval.* In all circumstances where the approval or consent of District is required hereunder, if District approves the proposed Transfer, the Transferee shall provide to District, within thirty (30) Business Days after District's notice to Tenant of District's approval, but, in any event no later than two (2) Business Days prior to the effective date of the Transfer, (a) proof of insurance required under Article XII obtained by Tenant and (b) an executed assignment and assumption of this Lease and the Leasehold Estate in a form reasonably acceptable to District. It shall be a condition to the effectiveness of any Transfer that the assignment and assumption referred to in this Section 10.2.2 shall be executed and delivered by each of Tenant and the Transferee and that the same shall be recorded by Tenant (or such Transferee) among the Land Records at no cost to District.

10.3 Transfer of Membership Interests; Amendment of Operating Agreement.

10.3.1 *Transfer.* Notwithstanding any other term of this Lease, the following Transfers shall be permitted from and after the Restricted Period without the approval of District: (i) a transfer or transfers of membership interests in Tenant to investors, which transfer or transfers do not entail a change in Control of Tenant, or (ii) transfers of ownership interests in Tenant to an existing Member, including, without limitation, transfers for estate planning purposes.

10.3.2 *Operating Agreement.* Tenant shall not amend the Operating Agreement or otherwise modify the relationship between the Members (including, but not limited to, the Members' respective financial interests in Tenant), without the prior written approval of District.

10.4 No Prohibition of Foreclosure Transfer. Notwithstanding anything to the contrary contained in this ARTICLE X or elsewhere in this Lease, this ARTICLE X shall not apply to and shall not prohibit a Foreclosure Transfer. In the event of a Foreclosure Transfer such notice and the information required under Section 10.2 shall be given as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer.

10.5 Tenant to Remain Liable. Notwithstanding such Transfer, unless District expressly agrees otherwise, Tenant shall remain fully liable hereunder for the performance of all of the obligations set forth herein, including, but not limited to, the payment of Rent. Tenant shall without delay perform each of the obligations of the assignee, transferee or sublessee at Tenant's sole cost and expense upon notice from District of the assignee's, transferee's or sublessee's failure to fulfill such obligations and without the necessity of District exhausting remedies against said assignee, transferee or sublessee. District shall not be obligated to resort to any other rights, remedies, or security before proceeding against Tenant. Except as otherwise provided in this Lease, all covenants, agreements, provisions, and conditions of this Lease shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns.

All covenants set forth in this Lease shall apply to and run with the land. A consent to one Transfer shall not be deemed a consent to any other assignment, transfer or subletting, to which the provisions of this ARTICLE X shall apply.

10.6 Subleases. Notwithstanding anything to the contrary contained in this ARTICLE X, the prior written consent of District shall not be required before Tenant enters into a Sublease. All residential Subleases to a Tenant shall be on a residential Sublease form approved in advance by District. Within ten (10) Business Days of execution of any Sublease (other than a residential Sublease), and as a condition to the effectiveness of any such Sublease, Tenant shall provide to District copies of such Sublease. At any time upon District's demand, within ten (10) Business Days of any such demand, Tenant shall provide to District: (i) a copy of any residential Sublease, and (ii) a schedule of all Subleases giving the names of all subtenants, a description of the space that has been sublet pursuant to each Sublease, expiration dates, rentals and other fees, and such other information as District reasonably may request.

10.7 Prohibited Transactions. Notwithstanding any provision to the contrary, in no event shall any Transfer or Sublease (a) be made to a Prohibited Person, (b) be for a term longer than the Term, (c) permit a use other than the Permitted Uses, (d) permit a Prohibited Use, or (e) violate Applicable Laws, or any term, covenant, condition or provision of this Lease or the Affordability Covenant.

ARTICLE XI
EXCULPATION AND INDEMNIFICATION

11.1 District Not Liable for Injury or Damage, Etc. From and after the Commencement Date, the District Indemnified Parties shall not be liable to Tenant or any of its Affiliates for, and Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and disbursements), penalty or fine incurred in connection with or arising from any injury, whether physical (including, without limitation, death), economic or otherwise to Tenant or to any other Person in, about or concerning the Leased Premises or any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other Person in, about or concerning the Leased Premises, irrespective of the cause of injury, damage or loss or any latent or patent defects in the Leased Premises, except to the extent any of the foregoing is due solely to the gross, negligence, fraud or willful misconduct of the District Indemnified Party.

11.2 District's Exculpation. Except for fraud or willful misconduct, none of the District Indemnified Parties (exclusive of the District) shall have any liability (personal or otherwise) hereunder, and no property or assets of the District Indemnified Parties (exclusive of the District) shall be subject to enforcement procedures for the satisfaction of Tenant's remedies hereunder or

any other liability of the District Indemnified Parties arising from or in connection with this Lease or the Project. Any damages and claims against District shall be limited to the value of its interest in the Land.

11.3 Indemnification of District.

11.3.1 *Tenant's Acts.* Tenant shall defend, indemnify and hold the District Indemnified Parties harmless from all loss, cost, liability, claim, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements), penalties and fines, incurred in connection with claims by a Person against any District Indemnified Party arising from: (i) the use or occupancy or manner of use or occupancy of the Leased Premises by Tenant or any Person claiming through or under Tenant; (ii) any acts, omissions or negligence of Tenant, or any Person claiming through or under Tenant, or of the contractors, agents, servants, employees, guests, invitees or licensees of Tenant, or any Person claiming through or under such Person, in each case to the extent in, about or concerning the Leased Premises during the Lease Term, including, without limitation, any acts, omissions or negligence in the making or performing of any repairs, restoration, alterations or improvements to the Leased Premises; (iii) any misrepresentation by Tenant in this Lease; (iv) any breach or other failure by Tenant to comply with the terms of this Lease; (v) any violations or alleged violations by Tenant of any Applicable Laws; or (vi) any Default or Event of Default (including, without limitation, any cure thereof by District), except to the extent any of the foregoing is caused solely by the gross negligence, fraud or willful misconduct of such District Indemnified Party.

11.3.2 *Environmental Damages.* Without limiting the generality of Section 11.3.1 above, Tenant hereby indemnifies and holds harmless the District Indemnified Parties from and against any and all Environmental Damages. Without limiting the foregoing, if the presence or Release of any Hazardous Material on or from the Leased Premises caused or permitted by Tenant or any Tenant Party results in any contamination of the Leased Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material.

11.3.3 *Scope of Indemnification Obligations.* The obligations of Tenant under this Article XI shall include, without limitation, the burden and expense of defending all claims, suits and administrative proceedings (with qualified counsel), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the District Indemnified Parties.

11.3.4 *No Effect by Insurance Coverage.* The obligations of Tenant under this Article XI shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to Workers' Compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Leased Premises.

11.4 Defense of Claim, Etc.

11.4.1 *Tenant's Defense Obligations.* If any claim, action or proceeding is made or brought against any District Indemnified Party by reason of any event to which reference is made in this Article XI, then, unless the Office of the Attorney General determines that such representation violates District policy or is legally prohibited, upon demand by District or such District Indemnified Party, Tenant shall either resist, defend or satisfy such claim, action or proceeding in the District Indemnified Party's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as District shall reasonably approve. If Tenant elects to undertake such defense by its own counsel or representatives, Tenant shall give notice of such election to the District Indemnified Party within ten (10) days after receiving notice of the claim therefrom. The District Indemnified Party shall cooperate with Tenant in such defense at Tenant's expense and provide Tenant with all information and assistance reasonably necessary to permit Tenant to settle and/or defend any such claim. The foregoing notwithstanding, any District Indemnified Party may at its own expense engage its own attorneys to defend it, or to assist it in the defense of such claim, action or proceeding, as the case may be.

11.4.2 *Failure by Tenant.* If Tenant fails or refuses to undertake such defense or fails to act within such period of ten (10) days, the District Indemnified Party may, but shall not be obligated to, after five (5) days' prior notice to Tenant, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of Tenant. The assumption of such sole defense by the District Indemnified Party shall in no way affect the indemnification obligations of Tenant.

11.5 Notification and Payment. Each District Indemnified Party shall promptly notify Tenant of the imposition of, incurrence by or assertion against them of any cost or expense as to which Tenant has agreed to indemnify such District Indemnified Party pursuant to the provisions of this Article XI. Tenant agrees to pay such District Indemnified Party all amounts due under this Article XI within sixty (60) days after receipt of the notice therefrom. Any delay by the District Indemnified Party in sending such notice does not relieve Tenant of the indemnification obligations set forth in this Article XI, except to the extent that defense of the claim is materially prejudiced as a result of such delay.

11.6 Survival. The provisions of this Article XI shall survive the expiration or termination of the Lease Term with respect to events and matters that arise or occur during the Lease Term (even if discovered following the expiration or termination of the Lease Term).

ARTICLE XII
INSURANCE, DAMAGE AND DESTRUCTION

12.1 Insurance Requirements. From and after issuance of the Final Certificate of Completion, Tenant shall maintain the insurances set forth herein. Tenant hereby covenants to provide District with timely evidence that such other insurances as are required herein are in place at the times and in the amounts to satisfy the requirements of this Article XII.

12.1.1 *Liability Insurance.* Tenant, at its sole cost and expense, shall carry or cause to be carried commercial general liability insurance protecting against liability for bodily injury, death, property damage and personal injury with respect to the Leased Premises and the operations related thereto, whether conducted on or off the Leased Premises in an amount of not less than _____ dollars ($_____) per occurrence, combined single limit, and designating Tenant as a named insured and District as an additional insured. Such insurance shall (within the limits of the insurance required above):

(a) include a broad form property damage liability endorsement with fire legal liability limit of not less than $_____, subject to adjustment by the CPI Index;

(b) contain blanket contractual liability insurance covering written contractual liability;

(c) contain contractual liability insurance specifically covering Tenant's indemnification obligation under Article XI, to the extent such indemnification obligation is for an insurable risk;

(d) contain independent contractors coverage (i.e., coverage for events arising out of work done by subcontractors);

(e) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a notice of occurrence clause;

(f) if the coverage is via a claims-made policy rather than on an occurrence basis, contain a knowledge of occurrence clause;

(g) contain an errors and omissions clause covering professional services;

(h) contain no exclusion with respect to suits arising from the use of reasonable force to protect persons and property;

(i) contain no employee and contractual exclusions in respect of the personal injury coverage, except that there may be an exclusion for contractual liability with respect to false arrest, wrongful eviction, libel, slander, invasion of privacy and similar claims, provided that such exclusion shall not apply if the liability would have existed in the absence of a contract;

(j) contain no exclusions unless approved by District, other than the industry standard exclusions for facilities of similar size, nature and character location;

(k) contain Products Liability/Completed Operations coverage; and

(l) provide for a deductible determined by Tenant, but not more than $_____ per loss, subject to adjustment by the CPI Index.

(m) include automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with the Leased Premises with a liability limit equivalent to that of the commercial general liability policy, with a deductible determined by Tenant of not more than $_____, subject to adjustment by the CPI Index.

12.1.2 *Property Insurance.*

(a) Tenant, at its sole cost and expense, shall carry or cause to be carried property damage insurance under an "All Risk" policy or its equivalent covering the Leased Premises with replacement cost valuation and a stipulated value endorsement in an amount not less than the full Replacement Value (determined in accordance with Section 12.8) and including the following coverages or clauses:

(i) coverage for physical loss or damage to the Improvements;

(ii) coverage for earth movement to include subsidence;

(iii) a replacement cost valuation without depreciation or obsolescence clause;

(iv) debris removal coverage;

(v) provision for a deductible determined by Tenant, but not more than $_____ per loss, subject to adjustment by the CPI Index;

(vi) contingent liability from operation of building laws;

(vii) demolition cost for undamaged portion coverage;

(viii) an agreed or stipulated amount endorsement in an amount not less than the full Replacement Value negating any coinsurance clauses;

(ix) coverage for explosion caused by steam pressure-fired vessels (which coverage may be provided under a separate policy reasonably approved by District);

(x) business interruption or business income coverage in accordance with Section 12.1.3; and

(xi) contain no exclusions unless approved in writing by District, other than the industry standard exclusions for facilities of similar size, location, nature and character.

(b) Tenant shall be named insured, and District shall be designated as an additional insured, but not a loss payee. If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried coverage against damage due to (x) water and sprinkler leakage and collapse (which shall at least insure against damage caused by water or any other substance discharged from any part of the fire protection equipment for the Leased Premises, and collapse or fall of tanks forming part of such fire protection equipment or the component parts or supports of such tanks); which shall be written with limits of coverage of not less than the full Replacement Value per occurrence, with a deductible of not more than $_____, subject to adjustment by the CPI Index, and (y) flood, which shall be written with limits of coverage not less than $_____, with a deductible of not more than $_____, subject to adjustment by the CPI Index, to the extent available at commercially reasonable rates and deductibles.

(c) If Tenant elects to insure Tenant's personal property used in connection with the Leased Premises, the replacement value of such personal property shall be added to the amount of insurance required by this Section.

12.1.3 *Other Insurance.* Tenant shall procure and carry insurance meeting all of the standards, limits, minimums, and requirements described as follows:

(a) Business Interruption or Business Income Insurance on an "All Risk" basis. The insurance specified in this subsection shall:

(i) provide coverage against all insurable risks of physical loss or damage to the Improvements;

(ii) Extra Expense coverage, with a limit of at least $1,000,000 to cover overtime and other extra costs incurred to expedite repairing or rebuilding the damaged portion of the Leased Premises;

(iii) provide for an amount of coverage based on the anticipated annual operating levels;

(iv) contain explosion caused by steam pressure fired vessels coverage (which coverage may be provided under a separate policy reasonably approved by District);

(v) provide for a deductible determined by Tenant, but for other than flood or windstorm not more than $_____ per loss, subject to adjustment by the CPI Index; and

(vi) contain no exclusions, unless approved by District, other than industry standard exclusions for Projects of similar size and location.

(b) Statutory Workers' Compensation and Disability Benefits Insurance and any other insurance required by law covering all persons employed by Tenant, contractors, subcontractors, or any entity performing work on or for the Project (unless and to the extent provided by such other parties), including Employers Liability coverage, all in amounts not less than the statutory minimum, except that Employers Liability coverage shall be in an amount equivalent to the commercial general liability insurance policy under Section 12.1.1.

(c) Boiler and Machinery Insurance, covering the entire heating, ventilating and air-conditioning systems, in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of such heating, ventilating and air conditioning systems, located on any portion of the Leased Premises and other machinery located on any portion of the Leased Premises, which shall designate Tenant as named insured and loss payee and designate District as additional insureds, as their interests may appear.

12.1.4 *Construction Insurance and Bonds.* Prior to the commencement of any Construction Work on Significant Alterations, Tenant shall procure or cause to be procured, and, after such procurement shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b), and (c), the insurance and bonds described below:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage that insures against earth movement to include subsidence) in an amount not less than the cost of reconstruction (including soft costs), written on a completed value basis or a reporting basis, for property damage protecting Tenant, District and the general contractor for such construction work, with a deductible determined by Tenant of not more than $_____, subject to adjustment by the CPI Index.

(b) Automobile liability insurance covering any owned, leased, non-owned or hired automobile or other motor vehicle used in connection with work being performed on or for the Leased Premises in an amount not less than $3,000,000 per occurrence, with a deductible determined by Tenant of not more than $_____, subject to adjustment by the CPI Index. Such insurance shall be afforded in a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, filed by the Insurance Services Office of the District.

(c) The architect and design engineers engaged with respect to the design of any Significant Alterations shall provide, pay for and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by negligent error, omission or act for which the architect or design engineer is legally liable. Such liability insurance will provide coverage of $1,000,000 for each wrongful act and $3,000,000 annual aggregate, extending to three (3) years after the issuance of a certificate of occupancy with respect to all of the Significant Alterations.

(d) Risk of loss from any unforeseen obstructions, encumbrances, difficulties or conditions encountered in the prosecution of work, or the action of the elements, or from any act or omission not authorized by this Lease on the part of the contractor or its subcontractors, agents or employees.

12.2 Treatment of Proceeds.

12.2.1 *Proceeds of Casualty Insurance in General.* Insurance proceeds payable with respect to a property loss (including any payments under any business interruption or business income coverage) shall be payable to Tenant. [**DISTRICT WILL CONSIDER COMMENTS OF LENDERS.**]

12.2.2 *Cooperation in Collection of Proceeds.* Tenant and District shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of a loss, and Tenant and District shall as soon as practicable execute and deliver such proofs of loss and other instruments as may be required of Tenant and District, respectively, for the purpose of obtaining the recovery of any such insurance proceeds.

12.3 General Provisions Applicable to All Policies.

12.3.1 *Insurance Companies.* All of the insurance policies required by this Article XII shall be procured from companies in good standing with the District Department of Insurance, Securities and Banking; licensed or authorized by the Department of Insurance, Securities and Banking to do business in the District; having agents upon whom service of process may be made in the District of Columbia; and have a rating in the latest edition of "Best's Key Rating Guide" of "A:XII" or better or another comparable rating reasonably acceptable to District, considering market conditions.

12.3.2 *Required Certificates.* Certificates of insurance evidencing the issuance of all insurance required by this Article XII, describing the coverage and providing for thirty (30) days prior notice to District by the insurance company of cancellation or non-renewal, shall be delivered from time to time by Tenant to District within a reasonable period of time after District's request therefor. The certificates of insurance shall be issued by or on behalf of the insurance company and shall bear the original signature of an officer or duly authorized agent having the authority to issue the certificate. The insurance company issuing the insurance also shall deliver to District, together with the certificates, proof reasonably satisfactory to District that the premiums for each policy are not then overdue. In addition, Tenant shall deliver to District an entire duplicate original or a copy (certified by Tenant to be true, complete and correct) of each policy within a reasonable period of time after District's request therefor.

12.3.3 *Compliance With Policy Requirements.* Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article XII, and Tenant shall perform, satisfy and comply with, or cause to be performed, satisfied and complied with, all conditions, provisions and requirements of all insurance policies.

12.3.4 *Required Insurance Policy Clauses.* Each policy of insurance required to be carried pursuant to the provisions of this Article XII and each certificate issued by or on behalf of the insurer shall contain (i) a clause designating District as an additional insured (but not a loss payee); and (ii) an agreement by the insurer that such policy shall not be canceled, materially modified, or denied renewal without at least thirty (30) days prior notice to District, specifically covering, without limitation, cancellation or non-renewal for non-payment of premium.

12.3.5 *Separate Insurance.* Tenant shall not carry separate liability or property insurance concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless District are included therein as additional insureds, as their interests may appear. Tenant shall immediately notify District of the carrying of any such separate insurance and shall cause certificates and/or policy copies of the same to be delivered as in this Lease herein before required.

12.3.6 *Duration of Policies.* Tenant shall procure policies for all insurance required by any provision of this Lease for periods of not less than one (1) year and shall procure renewals thereof from time to time before the expiration thereof, except that builders' all risk insurance shall only be renewed for the term of any construction period. Notwithstanding the foregoing, Tenant shall have the right to obtain short-term policies of less than one (1) year in order to achieve concurrency.

12.3.7 *Defective Certificates and Policies.* Following receipt of any policy or certificate of insurance from Tenant, District may notify Tenant in writing that, in the reasonable opinion of District, the insurance represented thereby does not conform to the requirements of this Article XII either in respect of the amount or in respect of the insurance company or for any other reason, and Tenant shall have (i) fifteen (15) days in which to cure any such defect in respect of amount and (ii) thirty (30) days to cure any other defect in respect of such insurance.

12.3.8 *Other Obligations of Tenant.* Compliance by Tenant with the requirements of this Article XII shall not relieve Tenant of any liability in excess of the insurance coverage provided under any insurance policy or of Tenant's liability and obligations under any other provision of this Lease, nor shall it preclude District from taking such other actions as may be available to District under any other provision of this Lease or at law or in equity.

12.3.9 *Waiver of Subrogation.* Tenant hereby releases District and all other additional insureds from liability arising out of damage that is covered by the insurance required by this Lease.

12.4 Additional Coverage. Tenant shall maintain such other insurance, in such amounts as from time to time reasonably may be required by District, against such other insurable hazards as at the time are commonly insured against in the case of projects in the District of a size, nature and character similar to the size, nature and character of the Leased Premises. All of the limits of insurance required and all deductibles of such insurance pursuant to this Article XII shall be

subject to review by District and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as District may reasonably require from time to time. Tenant shall be responsible for all deductibles.

12.5 No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by District or Tenant that such insurance is in any respect adequate.

12.6 Blanket or Umbrella Policies. The insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at Tenant's election, be effected by blanket, wrap-up and/or umbrella policies issued to Tenant covering the Leased Premises and other properties owned or leased by Tenant or its Affiliates, provided such policies otherwise comply with the provisions of this Lease and allocate to the Leased Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as insureds or additional insureds hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein. If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to District, upon District's request, certificates of insurance and copies (certified by Tenant to be true, complete and correct) of such policies as provided in Section 12.3.2, together with schedules annexed thereto setting forth the amount of insurance applicable to the Leased Premises.

12.7 Annual Aggregates. If there is imposed under any liability insurance policy required hereunder an annual aggregate which is applicable to claims other than products liability and completed operations, such an annual aggregate shall not be less than two (2) times the per occurrence limit required for such insurance.

12.8 Determination of Replacement Value.

12.8.1 *Definition.* The current replacement value of the Improvements (the "**Replacement Value**") shall be deemed to be an amount equal to the actual costs incurred or expended in connection with the construction of the Improvements as certified by the Architect upon completion of the Improvements, other than foundations and financing and other soft costs not applicable to replacement, adjusted for each year after completion of the Improvements in accordance with the percentage change in the Building Index. If the insurance required by Section 12.1 above is not sufficient to cover the Replacement Value, then within fifteen (15) days after such adjustment, said insurance shall be increased or supplemented to fully cover such Replacement Value. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements.

12.8.2 *Building Index.* As used herein, the "**Building Index**" shall mean the Marshall and Swift Cost Index or such other published index of construction costs which shall be selected from time to time by District and reasonably agreed to by Tenant, provided that such index shall

be a measure of construction costs widely recognized in the insurance industry and appropriate to the type and location of the Improvements.

12.9 Subleases and Operating Agreements. All Subleases or operating agreements pertaining to any part of the Leased Premises shall require either Tenant or the counterparty thereto to carry liability insurance naming Tenant, District as additional insured with limits reasonably prudent under the circumstances; provided, however, that the requirements set forth in this Section 12.9 shall not apply to any Subleases which are subleases of residential units.

12.10 Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to District.

12.11 Notice to District. If the Leased Premises are damaged or destroyed in whole or in any material part by fire or other casualty, Tenant shall notify District of same, and of the estimated amount of such casualty loss, as soon as reasonably possible after Tenant's discovery of same.

12.12 Casualty Restoration.

12.12.1 *Obligation to Restore.* Prior to the issuance of the Final Certificate of Completion, the terms of the Construction Covenant shall govern the restoration of the Leased Premises in the event of damage or destruction to the Leased Premises and the distribution of any insurance proceeds in connection therewith. After the issuance of the Final Certificate of Completion, if all or any Significant Portion of the Leased Premises are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall restore the Improvements to the condition thereof as it existed immediately before such casualty (a "**Casualty Restoration**"), regardless of whether the Net Insurance Proceeds shall be sufficient therefor.[**DISTRICT WILL CONSIDER COMMENTS OF LENDERS]**

12.12.2 *Commencement of Construction Work.* Tenant shall commence the Construction Work in connection with a Casualty Restoration within thirty (30) days after receipt of all building permits, which shall be applied for no more than sixty (60) days following receipt of the Net Insurance Proceeds by Tenant arising from the damage or destruction which caused the need for such Casualty Restoration, and Tenant shall diligently pursue the completion of such Casualty Restoration.

12.13 Restoration Funds. All Net Insurance Proceeds shall be paid to Tenant and shall be applied to a Casualty Restoration to the extent required to effect such Casualty Restoration. **[DISTRICT WILL CONSIDER COMMENTS OF LENDERS]**

12.14 Effect of Casualty on Lease. This Lease shall not terminate, be forfeited or be affected in any manner, by reason of damage to, or total or partial destruction of, or untenantability of, the Leased Premises or any part thereof resulting from such damage or destruction, and District's and Tenant's obligations hereunder shall continue as though the Leased Premises had not been

damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

ARTICLE XIII
FORCE MAJEURE

13.1 Excuse for Non-Performance. The Party(ies) whose performance has been or will be affected by any Force Majeure Event shall not be responsible or liable for, or deemed in default or breach hereof because of, any failure or delay in complying with its obligations under or pursuant to this Lease (other than the payment of money as such obligations come due hereunder) which it cannot perform solely as a result of one or more Force Majeure Events or its or their effects or by any combination thereof, and the periods allowed for the performance by the Party(ies) of such obligation(s) shall be extended on a day-for-day basis for so long as one or more Force Majeure Events continues to affect materially and adversely the performance of such Party of such obligation(s) under or pursuant to this Lease.

13.2 Mitigation. Each Party shall be obligated to use reasonable efforts to mitigate the adverse effect and duration of any Force Majeure Event which affects the performance of such Party.

13.3 Notice. Within ten (10) days after it becomes aware of the beginning of any Force Majeure Event, each Party shall give the other Party(ies) a statement describing the Force Majeure Event and its cause (to the extent known to the Party) and a description of the conditions delaying the performance of the Party's obligations. The affected Party shall also provide notice to the other Party of the cessation of the Force Majeure Event and the affected Party's ability to recommence performance of its obligations under this Lease by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as practicable after the cessation of the Force Majeure Event.

ARTICLE XIV
LEASEHOLD MORTGAGES

14.1 Prior to Issuance of the Final Certificate of Completion. Tenant's ability to mortgage or encumber the Leasehold Estate prior to issuance of the Final Certificate of Completion shall be governed by the Construction Covenant.

14.2 Following Issuance of the Final Certificate of Completion.

14.2.1 *Prior to expiration of Restricted Period.* Following issuance of the Final Certificate of Completion but prior to expiration of the Restricted Period, Tenant shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance

upon the Leasehold Estate, or suffer any lien or encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of law, except that Tenant may encumber the Leasehold Estate with a Leasehold Mortgage in accordance with the Project Funding Plan, or otherwise with the prior approval of District, which approval shall be within District's sole discretion.

14.2.2 *After expiration of Restricted Period.* Following expiration of the Restricted Period, Tenant shall not engage in any financing or other transaction creating a Mortgage or other lien or encumbrance upon the Leasehold Estate, or suffer any lien or encumbrance to be made on or attached to the Leasehold Estate, whether by express agreement or by operation of law, other than as set forth in the Project Funding Plan, except that Tenant may encumber the Leasehold Estate with a Leasehold Mortgagee who is an Institutional Lender with the prior approval of District, which approval shall not be unreasonably withheld, conditioned or delayed.

14.3 District's Review and Approval of Leasehold Mortgages.

14.3.1 *Tenant's Submissions for Approval of Leasehold Mortgage.* In the event that Tenant wishes to obtain any Leasehold Mortgage, Tenant shall provide to District, the following information and documents for District's review, at least sixty (60) days prior to the effective date of the proposed Leasehold Mortgage:

(a) the name and address of the proposed Leasehold Mortgagee and information reasonably sufficient to enable District to determine whether the proposed Leasehold Mortgagee is an Institutional Lender;

(b) a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the proposed Leasehold Mortgagee stating whether the proposed Leasehold Mortgagee is a Prohibited Person;

(c) the proposed loan documents evidencing the Leasehold Mortgage, which shall include detailed information on the disbursement of the proceeds of the loan secured by the Leasehold Mortgage; and

(d) any appraisal or other analysis provided to or obtained by the proposed Leasehold Mortgagee regarding the value of Tenant's interest the Leasehold Estate.

14.3.2 *District's Period of Review.* District shall notify Tenant within sixty (60) days after its receipt of the information and documents pursuant to Section 14.3.1 of its approval, conditional approval or disapproval of the Leasehold Mortgage or request additional information and documents required for District's review and approval. Any Leasehold Mortgage approved by the District shall be deemed a "**Permitted Mortgage**".

14.3.3 *Tenant's Submissions Following District's Approval.* Tenant shall deliver to District a photostatic copy of the Leasehold Mortgage immediately following the execution, delivery and (if applicable) recordation thereof, together with a certification by Tenant

confirming that the photostatic copy is a true copy of the Leasehold Mortgage and a certification by the Leasehold Mortgagee thereunder confirming the address of such Leasehold Mortgagee for notices.

14.3.5 *Estoppel Certificates.* The District will execute and deliver, within thirty (30) days of Tenant's request therefor, an estoppel certificate or such other similar certifications as may be reasonably requested from any Leasehold Mortgagee or potential Leasehold Mortgagee of Tenant (or the transferee of any Transfer of an ownership interest in Tenant permitted under this Lease), confirming (to the extent true) the following: (i) the Lease is in full force and effect, (ii) the Lease has not been terminated, or amended, except as specified, (iii) all rent due and payable under the Lease has been paid in full through the date of the estoppel certificate, and (iv) District has not sent a notice of default to Tenant, and to the best of District's current actual knowledge, Tenant is not in default under the Lease.

14.4 Effect of Leasehold Mortgages.

14.4.1 *No Greater Rights.* The execution and delivery of a Leasehold Mortgage shall not give or be deemed to give a Leasehold Mortgagee any greater rights against District than those granted to Tenant hereunder.

14.4.2 *Subordination.* The lien of all Leasehold Mortgages, and any other encumbrances on the Leasehold, whether permitted or not permitted pursuant to the terms of this Lease, shall be subject and subordinate to this Lease.

14.4.3 *Conflict Between Terms.* As between District and Tenant, the terms and conditions of this Lease shall govern in the event of a conflict between the terms hereof and the terms and conditions of any Leasehold Mortgage or any instrument relating to the loan secured thereby, notwithstanding any consent by District to any such financing or transaction, except as may otherwise be expressly agreed to in writing by District and Tenant.

14.5 Number of Leasehold Mortgages.

14.5.1 *Generally.* There may exist more than one Leasehold Mortgage at any given time, but the aggregate amount of all such Leasehold Mortgagees may not exceed the value of the Leasehold Estate.

14.5.2 *Rights of Multiple Leasehold Mortgagees.* In the event that there is more than one Leasehold Mortgage at any given time, all rights and remedies accorded to a Leasehold Mortgagee hereunder and all references to a Leasehold Mortgagee herein, shall be deemed to be accorded, and to be references to, each of such Leasehold Mortgagees; provided, however, that as between multiple Leasehold Mortgagees, the rights and remedies of the senior such Leasehold Mortgagee shall be senior to the rights and remedies of any and all other such Leasehold Mortgagees and, in the event of any conflict or inconsistency in the exercise, enforcement or construction of rights and remedies given multiple Leasehold Mortgagees hereunder, the

exercise, enforcement and construction of such rights and remedies by or for the senior Leasehold Mortgagee shall govern, control and take precedence over any exercise, enforcement and construction of such rights and remedies by or for all Leasehold Mortgagees that are junior to such senior Leasehold Mortgagee.

14.5.3 *Syndicates.* The Leasehold Mortgagee may consist of a syndicate of Institutional Lenders or other syndicate meeting the definition of Leasehold Mortgagee; provided, however, that (i) only one Institutional Lender may exercise the rights of the Leasehold Mortgagee hereunder, (ii) such Institutional Lender shall be designated by a notice delivered to District and executed by all of the Institutional Lenders in such syndicate, (iii) District shall deal solely with such Institutional Lender, on behalf of such syndicate, as the sole Leasehold Mortgagee hereunder, (iv) the actions taken, and the documents executed, by such Institutional Lender shall be binding upon all Persons in such syndicate and (v) District shall be permitted to disregard any notice, demand, direction or other communication received from any Institutional Lender in such syndicate that is not such designated Institutional Lender.

14.6 Effect of Foreclosure Transfer. A Foreclosure Transfer shall not require prior written consent of District or constitute a breach of any provision of or a Default under this Lease; provided that (i) such Foreclosure Transfer shall be carried out in compliance with any applicable requirements of Article X, (ii) such Foreclosure Transferee is not a Prohibited Person, and (iii) within thirty (30) days after the Foreclosure Transfer, the Foreclosure Transferee shall assume, by written instrument, this Lease, and the obligations, terms and conditions contained herein.

14.7 Restrictions on Use of Proceeds of Leasehold Mortgage. Until expiration of the Restricted Period, except as otherwise consented to by District, Tenant shall not pay, disburse or distribute any proceeds of any loan secured by any Leasehold Mortgage to itself or any Affiliate or Member of Tenant.

14.8 No Merger of Estates. Without the prior written consent of all Leasehold Mortgagees, the fee title to the Leased Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct notwithstanding the acquisition of both the fee title to the Leased Premises and the leasehold estate created by the Lease by the District, Tenant, or any third party by purchase or otherwise.

14.9 Mortgagee Protections. . Provided that any Permitted Mortgagee provides Landlord with a conformed copy of each Permitted Mortgage that contains the name and address of such Permitted Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, District hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage.

(a) Notices. If District shall give Tenant any Notice of an Event of Default hereunder

to Tenant, District shall simultaneously give a copy of each such notice to the Permitted Mortgagee at the address theretofore designated by it. Such notice shall be sent by District and deemed received as described in Section 16.8 below. In the case of an assignment of such Permitted Mortgage or change in address of such Permitted Mortgagee, said assignee or Permitted Mortgagee, by notice to District, may change the address to which such copies of notices are to be sent. District shall not be bound to recognize any assignment of such Permitted Mortgage unless and until District shall be given notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Permitted Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring District to give notices or copies thereof to said Permitted Mortgagee shall be binding upon District unless and until all of said holders shall designate in writing one of their number to receive all such notices and copies thereof and shall have given to District an original executed counterpart of such designation.

(b) Performance of Covenants. The Permitted Mortgagee shall have the right to perform any term, covenant or condition, and to remedy any default, by Tenant hereunder within the time periods specified herein, and District shall accept such performance with the same force and effect as if furnished by Tenant.

(c) Delegation to Permitted Mortgagee. Tenant may delegate irrevocably to the Permitted Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation shall be binding upon District unless and until either Tenant or the Permitted Mortgagee shall give to District a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Article XIV, together with notice specifying the provisions therein which delegate such authority to said Permitted Mortgagee, shall be sufficient to give District notice of such delegation.

(d) Default by Tenant. If an Event of Default occurs in the payment of any monetary obligation hereunder, District agrees not to terminate this Lease unless and until District provides notice of such Event of Default to the Permitted Mortgagee and such Permitted Mortgagee shall have failed to cure such Event of Default within fifteen (15) Business Days following delivery of such notice. If an Event of Default occurs in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, District agrees not to terminate this Lease unless and until District provides notice of such Event of Default to any Permitted Mortgagee and such Permitted Mortgagee shall have failed to cure such Event of Default within thirty (30) days following the giving of such notice to Permitted Mortgagee; provided, however, if such Event of Default cannot practicably be cured by the Permitted Mortgagee without taking possession of the Premises, or if such Event of Default is not susceptible of being cured by the Permitted Mortgagee, then District shall not terminate this

Lease if and as long as:

(i) In the case of an Event of Default which cannot practicably be cured by the Permitted Mortgagee without taking possession of the Leased Premises, the Permitted Mortgagee has delivered to District, prior to the date on which District shall be entitled to give notice of lease termination, a written undertaking wherein the Permitted Mortgagee agrees that it will cure such Event of Default;

(ii) In the case of an Event of Default which cannot practicably be cured by the Permitted Mortgagee without taking possession of the Premises, said Permitted Mortgagee shall proceed diligently to obtain possession of the Leased Premises as Permitted Mortgagee (including possession by receiver), and, upon obtaining such possession, shall proceed diligently to cure such Event of Default in accordance with the undertaking delivered pursuant to Subsection (i) above but in no event later than sixty (60) days after obtaining possession; and

(iii) In the case of an Event of Default which is not susceptible to being cured by the Permitted Mortgagee (for example, the insolvency of Tenant), the Permitted Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire the Leasehold Estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure), it being understood that the Permitted Mortgagee shall be permitted such extra reasonable time as is necessary to commence and diligently prosecute proceeds to lift any stay of foreclosure imposed by a court of bankruptcy, and upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured.

(iv) The Permitted Mortgagee shall not be required to obtain possession or to continue in possession as Permitted Mortgagee of the Leased Premises pursuant to Subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to Subsection (iii) above, if and when such Event of Default shall be cured. Nothing herein shall preclude District from exercising any of its rights or remedies with respect to any other Event of Default during any period of such forbearance, but in such event the Permitted Mortgagee shall have all of its rights provided for herein.

(e) Permitted Mortgagee Loss Payable. Landlord agrees that the names of each Permitted Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein.

ARTICLE XV

EMINENT DOMAIN

15.1 Total Condemnation. If the Leased Premises or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, this Lease shall terminate upon the effective date of the taking.

15.2 Partial Condemnation. If less than all or substantially all of the Improvements shall be taken by eminent domain or condemnation by any competent Governmental Authority for any public or private use or purpose, and District and Tenant mutually determine, within a reasonable period of time after such taking, that the remaining portion of the Improvements cannot economically and feasibly be used by Tenant under the terms of this Lease, then this Lease shall terminate.

15.3 Allocation of Award. In the event this Lease is terminated pursuant to Section 15.1 or Section 15.2, the condemnation award with respect to the Leased Premises shall be distributed as follows: first to the Leasehold Mortgagee in an amount up to the lesser of the valuation of the Leasehold Estate or an amount sufficient to pay or provide for the payment and discharge of all of the then-outstanding obligations under the Leasehold Mortgage, and thereafter any remaining balance shall be apportioned between the District and Tenant in accordance with Applicable Law.

ARTICLE XVI
GENERAL PROVISIONS

16.1 Entire Agreement. This Lease represents the entire agreement among the Parties with respect to the matters set forth herein and supersedes all prior negotiations, representations or agreements, either written or oral, pertaining to the subject matter of this Lease.

16.2 Amendments. This Lease may be amended only by a written instrument signed by District and Tenant.

16.3 Choice of Law. This Lease shall be governed by and interpreted in accordance with the internal laws of the District of Columbia, without giving effect to conflict of laws provisions.

16.4 Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Law. If, however, any provision of this Lease, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof, only shall be ineffective without in any manner invalidating or affecting the remaining provisions of this Lease or the valid portion of such provision, which provisions are deemed severable.

16.5 No Implied Waivers. No waiver by a Party of any term, obligation, condition or provision of this Lease shall be deemed to have been made, whether due to any course of

conduct, continuance or repetition of non-compliance, or otherwise, unless such waiver is expressed in writing and signed and delivered by the Party granting the waiver. No express waiver shall affect any term, obligation, condition or provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting the District's rights under any other provision in this Lease, it is agreed that no receipt of moneys by District from Tenant after the expiration of the Lease Term or termination of this Lease shall reinstate, continue or extend the Lease Term or the Lease, or affect any notice given to Tenant prior to the receipt of such moneys.

16.6 Successors and Assigns. Each of the Parties hereto binds itself and its successors and authorized assigns to the others and to the successors and authorized assigns of each of the other Parties with respect to all covenants of this Lease.

16.7 Interpretations. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. References herein to sections and exhibits refer to the referenced sections or exhibits hereof unless otherwise specified. The words "herein," "hereof," "hereunder," "hereby," "this Lease" and other similar references shall be construed to mean and include this Lease and all exhibits hereto and all amendments to any of them unless the context shall clearly indicate or require otherwise. Any reference in this Lease to any person includes its successors and assigns (as otherwise permitted under this Lease) and, in the case of any Governmental Authority, any person succeeding to its functions and authority. Any reference to a document or agreement, including this Lease, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time. References to any schedules or exhibits shall be construed to mean references to such schedules or exhibits as revised from time to time. The terms "include" and "including" shall be construed at all times as being followed by the words "without limitation" or "but not limited to" unless the context specifically indicates otherwise. Reference to "days" herein shall refer to calendar days unless otherwise specified. If the end of any period described herein falls on a Saturday, Sunday, or District of Columbia or federal holiday, the end of such period shall be deemed to fall on the next Business Day. In the event that any publication, institution or entity referred to herein ceases to exist, is discontinued or ceases to supply the data required to perform some measurement or calculation as set forth in this Lease, the Parties agree that they shall attempt in good faith to mutually agree upon a reasonable modification to this Lease to name an alternative publication, institution or entity to achieve substantially the same result as is intended by the Parties on the Commencement Date. This Lease has been negotiated and entered into by each Party with the advice of counsel and shall not be construed against one Party or another based on which Party drafted any portion of this Lease.

16.8 Notices. Any notice, request or other communication ("**Notice**") given or made hereunder shall be in writing and either (a) sent by any of the Parties or their respective attorneys, by registered or certified mail, return receipt requested, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the address specified

in this Section 16.8 for the party to whom the Notice is to be given, or to such other address, addresses, or substitute recipient for such party as such party shall hereafter designate by Notice given to the other party pursuant to this Section 16.8. Each Notice mailed shall be deemed given on the third Business Day following the date of mailing the same and each Notice delivered in person or by overnight courier shall be deemed given when delivered. Copies of all Notices given under this Lease must be given or served simultaneously and in the same manner required for Notices, as follows:

(a) If to the District to:

Office of the Deputy Mayor for Planning and Economic Development
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 317
Washington, D.C. 20004
Attn: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the Attorney General
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005
Attn: Deputy Attorney General, Commercial Division

(b) If to Tenant, to:

MM Washington Redevelopment Partners LLC
c/o MissionFirst Development LLC
1330 New Hampshire Avenue, NW, Suite 116
Washington, D.C. 20036

With a copy to:

Nolan Sheehan Patten LLLP
50 Federal Street, 8th Floor
Boston, Massachusetts 02110
Attn: Stephen M. Nolan, Esq.

Either Tenant or District, by notice to the other, may change its address for purposes of this Lease.

16.9 Memorandum of Lease. District or Tenant, at the request of the other, will promptly execute and deliver to the requesting party(ies) a Memorandum of Lease, duly acknowledged and in recordable form, setting forth a description of the Leased Premises, the Lease Term and any other provisions hereof, excepting the rental provisions, as either of the Parties may request. The Memorandum of Lease may be recorded by either District or Tenant. In the event the Memorandum of Lease is recorded in the land records of the District of Columbia, Tenant shall concurrently with its execution of the Memorandum of Lease execute in recordable form and deliver to District a quitclaim deed to hold in trust pending termination of the Leasehold Estate, which quitclaim deed may be recorded in the land records of the District of Columbia by District not less than three (3) days following such termination. Tenant shall pay all costs and expenses (including documentary and/or other transfer taxes, if any) associated with the recording the Memorandum of Lease and the quitclaim deed.

16.10 Third Party Beneficiaries. Except as otherwise expressly provided herein relating to indemnification, nothing in this Lease shall create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party shall be deemed a third party beneficiary of this Lease or any provision hereof.

16.11 Counterparts. This Lease may be executed in several original or electronically transmitted counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on the Parties, notwithstanding that the Parties may not be signatories to the original or the same counterpart. Any such original or electronically transmitted counterpart shall be admissible into evidence as an original of this Lease against the person which executed it; provided, however, that a full and complete set of any such original or electronically transmitted signature pages or copies thereof evidencing the intended execution of this Lease by all Parties must be produced if this Lease is to be considered binding upon the Parties.

16.12 Non-Merger. There shall not be a merger of Tenant's or District's interests in this Lease or the Leasehold Estate with (a) any interest of District in the Improvements; or (b) District's interest in this Lease or any other interest of District in the Leased Premises, direct or indirect, whether hereby or hereafter created; or (c) District's fee estate in the Land, or any part thereof, by reason of the fact that the same person or entity may acquire, own or hold, directly or indirectly, both an interest in this Lease or the Leasehold Estate, and all or part of (a), (b) or (c) above, and no such merger shall occur unless and until all persons, including, without limitation, District and Tenant, shall join in a written instrument effecting such merger and shall duly record the same.

16.13 Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY ON, OR IN RESPECT OF, ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR ANY DOCUMENT OR INSTRUMENT DELIVERED IN CONNECTION WITH THIS

LEASE, THE RELATIONSHIP OF PARTIES HEREUNDER, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

16.14 Anti-Deficiency Limitations. Tenant acknowledges and agrees, that the obligations of District under this Lease are subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351, (ii) the D.C. Official Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§47-355.01 – 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act, regardless of whether a particular obligation has been expressly so conditioned.

16.15 No Joint Venture. District and Tenant are independent parties under this Lease, and nothing in this Lease shall be deemed or construed for any purpose to establish between them a relationship of principal and agent, employment, partnership or joint venture. District and Tenant shall each be and remain an independent contractor with respect to all rights obtained and services performed under this Lease.

16.16 District's Right to Notice of Injury or Damage. Tenant shall notify District within thirty (30) days of any occurrence at the Leased Premises of which Tenant has notice and which Tenant believes could give rise to a claim of $1,000,000, subject to adjustment for CPI Index, or more, whether or not any claim has been made, complaint filed or suit commenced.

16.17 Litigation. Tenant shall furnish to District notice of each action, suit or proceeding before any court or other governmental body or any arbitrator which could materially adversely affect (i) Tenant's ability to fulfill its obligations under this Lease or (ii) the condition or operation (financial or other) of Tenant or the Leased Premises, in each case no later than the tenth (10^{th}) Business Day after the service of process with respect to such suit or proceeding or Tenant's otherwise obtaining knowledge thereof.

16.18 Procurement of Materials and Supplies. To the maximum extent feasible, Tenant will arrange to purchase or take delivery of construction materials and operating supplies in the District of Columbia, such that if sales tax is payable on such transactions the sales tax will be payable to District.

16.19 Rule Against Perpetuities. If any provision of this Lease shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia, such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of any member of the 110th Congress of the United States, plus twenty one (21) years thereafter.

16.20 Time for Performance. All dates for performance (including cure) shall expire at 6:00 p.m. (Eastern time) on the performance or cure date. In the event that the date for performance or cure falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

16.21 CPI Index Adjustment. Unless otherwise expressly provided hereunder, any dollar amount described in this Lease as "adjusted pursuant to the CPI index" (or words of similar import) shall be adjusted by multiplying such amount by a fraction, the numerator of which shall be the CPI Index for the calendar month immediately preceding the date of such adjustment, and the denominator of which shall be the CPI Index for the calendar month during which the Commencement Date occurred.

16.22 Incorporation of Schedules and Exhibits; Recitals. All Schedules and Exhibits referenced in this Lease are incorporated by this reference as if fully set forth in this Lease. In the event of any conflict between the Exhibits or the Schedules and this Lease, this Lease shall control. The Recitals of this Lease are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the Parties.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be duly executed as of the day and year first above written.

DISTRICT OF COLUMBIA, a municipal Corporation, by and through the Deputy Mayor for Planning and Economic Development pursuant to the delegation of authority contained in Mayor's Order No. _____.

By:_____
Name: _____
Title: Deputy Mayor for Planning and Economic Development

Approved for legal sufficiency by:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General
Date: _____

MM WASHINGTON REDEVELOPMENT PARTNERS LLC, a District of Columbia limited liability company

By: MM Washington Manager LLC, its manager

By: Mission First Housing Development Corporation, Inc., its manager

By: _____
Sarah Constant, Managing Director

EXHIBIT A

Description of the Land

Exhibit C

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this "**Covenant**") is made as of the _____ day of _____, 2010 ("**Effective Date**"), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**") and (ii) MM WASHINGTON REDEVELOPMENT PARTNERS LLC, a District of Columbia limited liability company (the "**Developer**").

RECITALS

R-1. District owns the improved real property located at 27 O Street, NW in Washington, D.C., known for tax and assessment purposes as Lot ____ in Square ____, as such property is more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**").

R-2. District and Developer entered into a Disposition and Development Agreement (by Ground Lease), effective _____, 2010 (the "**Agreement**"), pursuant to which District agreed to ground lease the Property to Developer subject to certain terms and conditions that survive the sale, some of which are set forth herein as covenants that will run with the land.

R-3. Pursuant to the terms of the Agreement, District and Developer have entered into that certain Ground Lease, dated_____, 2010 (the "**Ground Lease**").

R-4. The Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents.

R-5. As required by the Agreement, Developer, for the benefit of District, agrees to construct and use the Property in accordance with the Approved Plans and Specifications agreed upon by the parties, pursuant to the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto agree that the Property must be held, sold and conveyed, subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 DEFINITIONS. For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

"Affiliate" means with respect to any Person ("first Person") (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms "controlling", "controlled by", or "under common control with" shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

"**Affordability Covenant**" is defined in the Agreement.

"**Affordable Unit**" is defined in the Agreement.

"**Agreement**" is defined in the Recitals.

"Applicable Law" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historical preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

"Approved Plans and Specifications" is defined in Section 4.2.1 of the Agreement, as the same may be modified pursuant to Section 2.4 of this Covenant.

"Architect" means the architect of record, duly licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

"Business Day" means Monday through Friday, inclusive, other than holidays recognized by the District government.

"CBE Agreement" is that agreement between Developer and DSLBD governing certain obligations of Developer under D.C. Law 16-33 with respect to the Project.

"Certificate of Completion" means that certificate provided by Developer to the District in connection with Completion of Construction, as required under Section 2.3.3 herein.

"**Certificate of Final Completion**" is defined in Section 2.3.4.

"Certificate of Occupancy" means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Project.

"Commencement of Construction" means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the Property

equipment necessary for work on the Project, and (iv) obtained the Permits (through building permit, but not including all trade Permits) and commenced work on the Project pursuant to the Approved Plans and Specifications. For purposes of this Agreement, the term "**Commencement of Construction**" does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the Property for development of the Improvements thereon or the investigations of environmental conditions.

"Completion of Construction" means (i) Developer has substantially completed construction of the Project, exclusive only of Punch List Items, in accordance with the Approved Plans and Specifications and this Covenant; (ii) Developer's general contractor is entitled to final payment under the construction contract exclusive only of any retainage held on account of Punch List Items; (iii) Developer has provided District with a copy of the Certificate of Completion; and (iv) a permanent Certificate of Occupancy has been issued for the Project.

"**Compliance Form**" is defined in Section 2.7(d).

"**Construction Consultant**" is defined in Section 2.1.2.

"**Construction Covenants**" shall mean those covenants contained in Article II.

"**Construction Drawings**" shall mean the drawings, plans, and specifications for the Improvements submitted by Developer to District in accordance with the terms of the Agreement.

"**Contaminant Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharge of barrels, containers and other closed receptacles containing any Hazardous Materials) of any Hazardous Materials.

"**Debt Financing**" shall mean the financing to be obtained by Developer from an Institutional Lender to fund the costs set forth in the Final Project Budget, other than the Equity Investment, and any refinancing of said financing.

"**Developer**" means MM Washington Redevelopment Partners, LLC, and its successors and assigns.

"**Developer's Agents**" mean the Developer's agents, employees, consultants, contractors, subcontractors and representatives.

"Developer First Source Agreement" is that agreement between the Developer and the DOES, entered into in accordance with Section 7.6 of the Agreement, governing certain obligations of Developer regarding job creation and employment generated as a result of construction of the Project.

"**Development Plan**" means the Developer's detailed plans for developing, constructing, financing, using and operating the Project as a mixed use development including (80-90) units of affordable senior housing rental units, approximately 15,000 square feet of community programming space, and development of usual and customary ancillary spaces, unless otherwise modified by Developer, with the prior approval of District in its sole discretion.

"**Disapproval Notice**" is defined in Section 2.4.

"**DOES**" is the District of Columbia Department of Employment Services.

"**DOL**" is the United States Department of Labor.

"**DSLBD**" is the District of Columbia Department of Small and Local Business Development.

"**Environmental Claims**" is defined in Section 3.3.1.

"Environmental Laws" means any present and future federal or District law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of federal or District governmental authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing or successor law, and any amendment, rule, regulatory order or directive issued thereunder.

"**Equity Investment**" shall mean all funding that is required for the development and construction of the Project in excess of any Debt Financing, but specifically excluding funding in the form of a mezzanine loan. Equity Investment may be made in the form of deferred development fees in an amount not to exceed the amount shown in the approved Project Funding Plan and Final Project Budget.

"**Event of Default**" is defined in Section 5.1.

"Final Completion" means following Completion of Construction (i) the completion of all Punch List Items; (ii) the close-out of all construction contracts for the Project; (iii) the payment of all costs of constructing the Project and receipt by Developer of fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project; and (iv) the receipt by District of a certification by Developer of the items in clauses (i) through (iii) of this definition.

"**Final Project Budget**" means Developer's budget for construction of the Project that includes a cost itemization prepared by Developer specifying all costs (direct and indirect) by item, including (i) the costs of all labor, materials, and services necessary for the construction of the Project and (ii) all other expenses anticipated by Developer incident to the Project (including, without limitation, anticipated interest on all financing, taxes and insurance costs) and the construction thereof, which was approved by District prior to the Effective Date. The Final Project Budget has been initialed by both parties and is attached hereto as Exhibit C.

"Force Majeure" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, terrorism, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event (i) is not within the reasonable control of the Developer or its Members; (ii) is not due to the fault or negligence of Developer or its Members; (iii) is not reasonably foreseeable and avoidable by the Developer or its Members or District in the event District's claim is based on a Force Majeure Event, and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding (A) shortage or unavailability of funds or financial condition and (B) changes in market conditions such that construction of the Project as contemplated by this Agreement and the Approved Plans and Specifications is no longer practicable under the circumstances.

"**Green Building Act**" means that certain act of the District of Columbia Council enacted as D.C. Law 16-234 (effective March 8, 2007) and codified as D.C. Code Section 6-1451.01 *et seq.*

"**Ground Lease**" has the meaning set forth in the Recitals.

"**HUD**" is the United States Department of Housing and Urban Development.

"Improvements" means the landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in

connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Covenant.

"**Indemnified Parties**" is defined in Section 3.3.1.

"**Institutional Lender**" means a Person that is not an Affiliate of Developer or a Prohibited Person and is (i) a commercial bank, savings and loan association, trust company or national banking association, acting for its own account; (ii) a finance company principally engaged in the origination of commercial mortgage loans; (iii) an insurance company, acting for its own account; (iv) a public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds; (v) a pension, retirement, or profit-sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent; (vi) a publicly traded real estate investment trust; (vii) the District of Columbia or such other governmental agency; (viii) a charitable organization regularly engaged in making loans secured by real estate or (ix) any other lender regularly engaged in making loans secured by real estate or interests in entities owning real estate.

"Land Records" means the property records maintained by the District of Columbia Recorder of Deeds.

"Letters of Credit" are those letters of credit totaling two hundred thousand dollars ($200,000.00) that Developer delivered to District in accordance with the Agreement.

"**Member**" means any Person with membership interest in Developer.

"**Modification**" is defined in Section 2.4.1.

"**Mortgage**" means a mortgage, deed of trust, mortgage deed, or such other classes of documents as are commonly given to secure advances on real estate and leasehold estates under the laws of the District of Columbia.

"**Mortgagee**" means the holder of a Mortgage securing Debt Financing.

"**OAG**" is the Office of the Attorney General for the District of Columbia.

"Operator First Source Agreement" is that agreement, in customary form and otherwise acceptable to District, entered into in accordance with Section 3.4.1 herein.

"Permits" means all site, building, construction, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property (including, without limitation, the federal government, WMATA, and any utility company, as the case may be) necessary to commence and complete construction and occupancy of the Project in accordance with the Approved Plans and Specifications and this Covenant.

"Person" means any individual, corporation, limited liability company, trust, partnership, association, or other entity.

"Prohibited Person" shall mean any of the following Persons: (a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to Applicable Law concerning organized crime; or (b) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the Effective Date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the Effective Date hereof, Iran, Sudan and Syria); or (c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or (e) Any Person suspended or debarred by HUD or by the District of Columbia government; or (f) Any Affiliate of any of the Persons described in paragraphs (a) through (e) above.

"Prohibited Uses" shall have the meaning set forth in Article III.

"Project" means those Improvements on the Property, and the development and construction thereof in accordance with the Development Plan, Approved Plans and Specifications and this Covenant.

"Project Funding Plan" means the Developer's funding plan that describes the sources and uses of funds for the Project and the methods for obtaining such funds (including the sources of all Equity Investment and Debt Financing, attached as an Exhibit to the Agreement, together with such modifications thereto as have been approved by District.

"Property" is defined in the Recitals.

"Punch List Items" mean the minor items of work to be completed or corrected prior to final payment to Developer's general contractor pursuant to its construction contract in order to fully complete the Project in accordance with the Approved Plans and Specifications.

"Release" means an instrument, in recordable form, executed by the parties that releases one or more covenants contained herein.

"Schedule of Performance" means that schedule of performance setting forth the timelines for milestones in the development, construction, and completion of the Project, including a construction timeline in customary form, and dates for submission of documentation required under this Covenant, attached as Exhibit B hereto, as such Schedule of Performance may be modified with the approval of the District in its sole and absolute discretion.

"**Second Notice**" means that notice given by Developer to District in accordance with Section 2.4.1 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN DAYS SHALL CONSTITUTE APPROVAL OF THE PROJECT DRAWINGS OR [FILL IN APPLICABLE ITEM] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; (c) be delivered in the manner prescribed in ARTICLE XI, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"**Stabilization**" means that point in time when not less than ninety-five percent (95%) of the Residential Units (as such term is defined in the Agreement) are leased by Developer to tenants and when income from operation of the Project is sufficient in amount to pay all operating expenses related to the operation of the Project.

"Tax Credit Equity" has the meaning set forth in Section 2.9.3.

"**Transfer**" means any sale, assignment, conveyance, lease, or other transfer of the Property, the Improvements, or the membership interests of Developer.

"**Use Covenants**" means those covenants contained in Article III.

1.2 GOVERNING LAW. This Covenant shall be governed by and construed in accordance with the laws of the District of Columbia (without reference to conflicts of law principles).

1.3 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 NUMBER; GENDER. Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on District or Developer or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word "including," and variations thereof, shall mean "including without limitation."

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

1.11 FORCE MAJEURE DELAYS. Developer shall not be considered in default to perform its obligations under this Covenant, in the event of forced delay in the performance of such obligations due to Force Majeure. It is the purpose and intent of this provision that in the event of the occurrence of any such Force Majeure event, the time or times for performance of the obligations of Developer shall be extended for the period of the Force Majeure; provided, however that: (a) Developer shall have first notified, within ten (10) Business Days after it becomes aware of the beginning of any such Force Majeure event, District thereof in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (b) in the case of a delay in obtaining Permits, Developer must have filed complete applications for such Permits by the dates set forth in the Schedule of Performance and, if Developer does not self-expedite the Permits, shall have hired an expediter reasonably acceptable to District to monitor and expedite the Permit process; and (c) Developer must take commercially reasonable actions to minimize the delay. If Developer requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of Developer to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

ARTICLE II
CONSTRUCTION COVENANTS

2.1 OBLIGATION TO CONSTRUCT PROJECT

2.1.1 Covenant to Develop and Construct. Developer hereby agrees to develop and construct the Project in accordance with the Development Plan, Approved Plans and Specifications, the Schedule of Performance and this Covenant. The Project shall be constructed in compliance with all Permits and Applicable Law, including the Green Building Act, and in a first-class and diligent manner in accordance with industry standards. The cost of development and construction of Project thereon shall be borne solely by Developer.

2.1.2 Construction Consultant. On or before the Commencement of Construction, the Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by the District, on such terms as the District may approve, (a) to review and report to the District, with respect to the Construction Drawings, the Schedule of Performance, and the conformity of such matters to this Covenant, (b) to report to the District on a monthly basis whether the construction of the Project is in adherence to the Schedule of Performance, (c) to review and approve whether the construction of the Project is consistent with the requirements of this Covenant and (d) to review and report to the District on the District's issuance of the Certificate of Final Completion. The Construction Consultant shall receive timely reports from the Architect and the Developer, as necessary, and shall promptly report any issues or problems to the District and the Developer. The Construction Consultant shall provide such certifications as are provided in this Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense, provided that in no event shall such costs and expenses exceed the amount contained in the Final Project Budget.

2.2 PRE-CONSTRUCTION ITEMS

2.2.1 Issuance of Permits. Developer shall have the sole responsibility for obtaining all Permits from the applicable agency within the District of Columbia government or other authority. In no event shall Developer commence site work or construction of all or any portion of the Project until Developer has obtained all Permits necessary to commence and maintain the same, without lapse, to complete the portion of the contemplated work. After approval by District of all Construction Drawings, Developer agrees to diligently pursue obtaining all Permits. From and after the date of any such application until issuance of a Permit, Developer shall report Permit status in writing every thirty (30) days to District. Developer shall submit to District copies of documents evidencing each and every Permit obtained by Developer.

2.2.2 Site Preparation. Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specifications, including costs associated with construction of the Project, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the Property and abutting public property necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and in accordance with all appropriate District of Columbia agency approvals and government standards, and Applicable Law.

2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS

2.3.1 Commencement of Construction; Schedule of Performance. Subject to Force Majeure, Developer agrees that it shall achieve Commencement of Construction on or before the date indicated in the Schedule of Performance and diligently prosecute the development and construction of the Project in accordance with the Approved Plans and Specifications and the Schedule of Performance.

2.3.2 Easements for Public Utilities. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Approved Plans and Specifications or is otherwise permitted by the District.

2.3.3 Affordable Units. The Affordable Units shall be constructed in accordance with the Affordability Covenant.

2.3.4 Certificate of Completion. Subject to Force Majeure, Developer shall achieve Completion of Construction on or before the date indicated in the Schedule of Performance. Promptly after Developer achieves Completion of Construction, Developer shall furnish District with a Certificate of Completion in form and substance substantially similar to AIA Form G704, in which the Developer states under oath that (a) the Project has been completed, subject only to Punch List Items, in accordance with all Approved Plans and Specifications and all Applicable Law (accompanied with a certificate from Architect stating the same) and (b) all of the Construction Covenants herein, including the times for Commencement of Construction and Completion of Construction, have been fully satisfied.

2.3.5 Final Completion. Subject to Force Majeure, Developer shall achieve Final Completion on or before the date indicated in the Schedule of Performance. Promptly after Developer achieves Final Completion, Developer shall notify District and certify, under oath, that all Punch List Items have been completed, all construction contracts for the Project have been closed-out, all costs of constructing the Project have been paid, and Developer shall have received fully executed and notarized valid releases of liens from all manufacturers, suppliers, subcontractors, general contractors, and all other Persons furnishing supplies or labor in connection with the Project. Following District's inspection of the Project in accordance with Sections 3.1 and 3.2, provided District accepts Final Completion of the Project, District within a reasonable period of time, not to exceed thirty (30) days, shall deliver to Developer a certificate ("**Certificate of Final Completion**") in recordable form confirming Developer's Final Completion of the Project.

2.4 MODIFICATIONS TO APPROVED PLANS AND SPECIFICATIONS

2.4.1 Modification. Developer shall not make or cause to be made any material changes to the Approved Plans and Specifications (any such change, a "**Modification**") without District's prior written approval. If Developer desires to make a Modification, Developer shall submit the proposed Modification to District for approval (such approval not to be unreasonably withheld, delayed or conditioned). District agrees that it shall respond to any such request within a reasonable period of time, not to exceed twenty (20) days. If District does not respond within twenty (20) days, then Developer may send a Second Notice to District. Failure by the District to respond within ten (10) days after a Second Notice shall be deemed approval. Any approved or deemed approved Modification shall become part of the Approved Plans and Specifications.

2.4.2 Disapproval Notice. If District issues a notice of disapproval of a Modification ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for

such disapproval. If District issues a Disapproval Notice, Developer may revise the Modification to address the objections of District and may resubmit the revised Modification for approval. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission.

2.4.3 No Representation or Liability. District's review and approval of any Construction Drawings and Modification is not and shall not be construed as a representation or other assurance that it complies with any building codes, regulations or standards, including, without limitation, building, engineering, and structural design, or any other Applicable Law. District shall incur no liability in connection with its review of any Construction Drawings and Modification under this Covenant and shall review such Construction Drawings and Modification solely for the purpose of protecting its own interests.

2.5 LABOR/EMPLOYMENT COVENANTS.

2.5.1 If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer shall:

(a) send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the DOL, advising the said labor union or worker's representative of Developer's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(b) comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules and regulations and relevant orders of the DOL, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications to the extent applicable;

(c) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the DOL and HUD, and will permit access to its books, records, and accounts pertaining to its employment practices by DOL and HUD for purposes of investigation to ascertain compliance with such rules, regulations and orders; and

(d) require the inclusion of the provisions of paragraphs (a) through (c) of this subsection in every contract, subcontract, or purchase order, unless exempted by rules, regulations, or orders of DOL issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor and vendor.

2.5.2 If Developer receives federal or District of Columbia financial assistance, and if the construction of the Project is a union project with respect to the Property, Developer will take such action with respect to any contract, subcontract, or purchase order as District, DOES, or DOL may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event of Developer's non-compliance with this Section or with any applicable rule, regulation, or order, the District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Law.

2.6 COMPLIANCE. During the term of this Covenant, Developer agrees to: (i) comply with all Applicable Law; (ii) comply with and maintain the CBE Agreement; and (iii) comply with and maintain the Developer First Source Agreement.

2.7 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of Developer's construction lender and any applicable District of Columbia building and health code requirements, District shall have the following rights:

(a) Inspection of Site. Upon at least five (5) Business Days prior written notice to Developer, District shall have the right to enter the Property from time to time and at no cost or expense to District, for the sole purpose of performing routine inspections in connection with the development and construction of the Project; provided, however, that any persons inspecting the Project by or on behalf of District shall at all times adhere to all industry standard safety practices reasonably imposed by Developer and/or contractors with respect to the Project site. Developer understands that District or its representatives will enter the Property from time to time for the sole purpose of undertaking the inspection of the Project to determine conformance to the Approved Plans and Specifications and this Covenant, as applicable, and Developer shall have the right to accompany those persons during such inspections. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law.

(b) Progress Reports. From and after the Effective Date and until issuance of the Certificate of Final Completion, Developer, upon request by District, shall make written reports to District as to the progress of the construction of the Project, in such form and detail as may reasonably be requested by District, which shall include, among other things, a reasonable number of construction photographs taken since the last report submitted by Developer, and a detailed statement of adherence to or deviation from the Schedule of Performance and any experienced or anticipated delays or other materials construction issues that have arisen since the last report submitted by Developer. Such progress reports shall be delivered to District by the Developer within ten (10) days after request by District, but not more frequently than once a month.

(c) Audit Rights. Upon reasonable prior notice at any time prior to Final Completion, District shall have the right (at the cost of District unless Developer is found to be in material violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to inspect the books, records, and corporate documents of Developer for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Act of 1985, D.C. Official Code §§ 2-301.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

(d) Project Compliance Monitoring System. Pursuant to the Compliance Unit Establishment Act of 2008, D.C. Law 17-176, effective June 13, 2008, Council established a compliance unit within the Office of the District of Columbia Auditor, which was charged with conducting audits and reporting on compliance of certain real estate projects. In furtherance of this compliance review, beginning the first month immediately following the Effective Date and continuing each month thereafter until issuance of the Final Certificate of Completion, no later than five (5) Business Days prior to the end of each calendar month, Developer shall submit to District a detail of the status of the Project in the form attached hereto and incorporated herein as Exhibit D (the "**Compliance Form**"), as such form may be amended from time-to-time by the District. Upon District's receipt of Developer's monthly Compliance Form, District will generate a written report, which, if correct, Developer shall execute within twenty-four (24) hours following Developer's receipt of the report from District, but in no event later than the last day of the subject month.

2.8 MILESTONE NOTICES. Upon completion of each milestone in the Schedule of Performance, Developer shall notify District, and District and/or the Construction Consultant shall have thirty (30) days to inspect the Property and certify Developer's completion of such Milestone.

2.9 PROJECT FUNDING PLAN; FINAL PROJECT BUDGET; DEBT FINANCING AND TAX CREDIT EQUITY.

2.9.1 Project Funding Plan. Developer shall not subsequent to District's approval of the Project Funding Plan (a) modify the Project Funding Plan, (b) obtain funds for the Project from any sources not identified in the Project Funding Plan, or (c) use funds for the Project for any uses not identified in the Project Funding Plan, without the prior approval of (i) the District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Developer within ten (10) Business Days after a request for approval and (ii) any other persons required to approve use of Project funds, if any. Notwithstanding any other provisions of this Covenant, any modification to the amount, timing of disbursal or any

other element related to the contribution of Project funds for which the District is a source shall not be made without the prior approval of the District in its sole and absolute discretion.

2.9.2 Final Project Budget. Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Developer within ten (10) Business Days after a request for approval. Notwithstanding the requirement for District approval of modifications to the Final Project Budget, Developer shall be permitted to reallocate budgeted funds amongst and between Final Project Budget cost items, as needed, in an amount not to exceed five percent (5%) of the total Final Project Budget without District approval.

2.9.3 Debt Financing and Tax Equity Financing. From the date hereof until Final Completion, Developer shall not obtain any Debt Financing or any tax credit equity investment financing for the Project from any investor (**"Tax Credit Equity"**), or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the leasehold estate created by the Ground Lease or the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the leasehold estate created by the Ground Lease or the Property (other than customary and necessary easements for utilities or other non-material encumbrances required in connection with the development or operation of the Project), without the prior written approval of District, such approval not to be unreasonably withheld, conditioned or delayed and to be deemed given if no response is received by Developer within ten (10) Business Days after a request for approval; provided, however, that Developer may enter into any such Debt Financing, Tax Credit Equity, or Mortgage without the prior approval of District if such Debt Financing, Tax Credit Equity, or Mortgage is specifically described in the then current Project Funding Plan, as such Project Funding Plan may be amended from time to time with the approval of District and as approved as otherwise provided herein. Any Mortgage securing such Debt Financing, unless otherwise approved by District, shall (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget; notwithstanding the foregoing, the proceeds of such Debt Financing or Tax Credit Equity shall not be used to fund distributions to equity holders in Developer or acquisition, development, construction, operation or any other costs relating to any other real property, personal property or business operation other than the Project; and (ii) the amount thereof, together with all other funds available to the Developer, shall be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Tax Credit Equity (other than any financing reflected on the Project Funding Plan, which financing has been previously approved by District), Developer shall submit to District such documents as District may reasonably request, including, but not limited, copies of:

(a) The commitment or agreement between Developer and the proposed mortgagee or the provider of such Debt Financing or Tax Credit Equity, certified by Developer to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing or Tax Credit Equity, certified by Developer to be true and accurate; and

(c) A copy of the proposed Mortgage, deed of trust or such other instrument to be used to secure the Debt Financing or any documents evidencing the Tax Credit Equity reasonably requested by District.

The terms of this Section 2.9.3 shall terminate as of Final Completion.

2.9.4 Mortgagee Protections. Provided that any Mortgagee approved by District (an "approved Mortgagee" hereunder) provides District with a conformed copy of a Mortgage approved in form by District (an "approved Mortgage" hereunder) that contains the name and address of such approved Mortgagee, and provided such approved Mortgage was executed in compliance with the terms hereof, District hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such approved Mortgage.

(a) Notices. If District shall give Developer any notice of an Event of Default hereunder to Developer, District shall simultaneously give a copy of each such notice to an approved Mortgagee at the address theretofore designated by it. Such notice shall be sent by District and deemed received as described in Section 11.1 below. In the case of an assignment of an approved Mortgage or change in address of an approved Mortgagee, said assignee or approved Mortgagee, by notice to District, may change the address to which such copies of notices are to be sent. District shall not be bound to recognize any assignment of such approved Mortgage unless and until District shall be given notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be an approved Mortgagee hereunder with respect to the approved Mortgage being assigned. If such approved Mortgage is held by more than one person, corporation or other entity, no provision of this Covenant requiring District to give notices or copies thereof to said approved Mortgagee shall be binding upon District unless and until all of said holders shall designate in writing one of their number to receive all such notices and copies thereof and shall have given to District an original executed counterpart of such designation.

(b) Performance of Covenants. An approved Mortgagee shall have the right to perform any term, covenant or condition, and to remedy any default, by Developer hereunder within the time periods specified herein, and District shall accept such performance with the same force and effect as if furnished by Developer.

(c) Delegation to Approved Mortgagee. Developer may delegate irrevocably to the approved Mortgagee the non-exclusive authority to exercise any or all of Developer's rights hereunder, but no such delegation shall be binding upon District unless and until either Developer or the approved Mortgagee shall give to District a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the approved Mortgage itself, in which case service upon District of an executed counterpart or conformed copy of said approved Mortgage in accordance with this Article II, together with notice specifying the provisions therein which delegate such authority to said approved Mortgagee, shall be sufficient to give District notice of such delegation.

ARTICLE III
USE COVENANTS

3.1 PROHIBITED USES. The Property shall be used for any uses permitted by Applicable Law and the Development Plan; except that no portion of the Property shall be used, in whole or in part, for any of the following "**Prohibited Uses**": laundromat (but the foregoing shall not prohibit coin operated washing machines and dryers for the use of residents), check-cashing establishment, adult entertainment, and drive thru services.

3.2 NONDISCRIMINATION COVENANTS

3.2.1 Covenant not to Discriminate in Sales or Rentals. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the sale, lease, or rental or in the use or occupancy of the Project.

3.2.2 Covenant not to Discriminate in Employment. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the construction and operation of the Project.

3.2.3 Affirmative Action. Developer will take affirmative action to ensure that employees are treated in accordance with Applicable Law during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap as and to the extent provided by Applicable Law. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of

compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES or District setting forth the provisions of this non-discrimination clause.

3.2.4 Solicitations for Employment. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

3.2.5 Enforcement. In the event of Developer's non-compliance with the nondiscrimination covenants of this Section 3.2 or with any applicable rule, regulation, or order, District, DOES, or DOL may take such enforcement against Developer, including, but not limited to, an action for injunctive relief and/or monetary damages, as may be provided by Applicable Law.

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION

3.3.1 Compliance with Environmental Laws; Indemnity. Developer hereby covenants that, at its sole cost and expense (as between District and Developer, provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and District and its officers, agents, and employees (collectively, the "**Indemnified Parties**") shall have no responsibility or liability with respect thereto, except as provided below. Developer shall indemnify, defend, and hold District harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Parties in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material after the Effective Date, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property subsequent to the Effective Date ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify District or any of the other Indemnified Parties if and to the extent that any Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

3.3.2 Release. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims,

liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands or Environmental Claims arise in connection with the violation of any Environmental Law by District or any of District's agents, officers, directors, contractors or employees.

3.4 COMPLIANCE WITH AGREEMENTS.

3.4.1 First Source Agreement. Developer shall use commercially reasonable efforts to cause the entity(ies) engaged for property management and security at the Project to enter into and comply with an Operator First Source Agreement with DOES, which shall govern such entity(ies) activities at the Project for the term thereof.

3.4.2 CBE Agreement. Developer shall comply with the CBE Agreement for the term thereof.

ARTICLE IV
TERM; RELEASE

4.1 TERM OF CONSTRUCTION COVENANTS. The Construction Covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and the ground lease estate created by the Ground Lease, and otherwise remain in effect until District is required to deliver to Developer the Certificate of Final Completion. At such time, Developer shall be entitled to a Release with respect to such Construction Covenants.

4.2 TERM OF USE RESTRICTIONS AND OTHER COVENANTS. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Developer and its successors and assigns in perpetuity, unless otherwise provided herein.

4.3 RELEASE. At the request of either party to this Covenant and provided that there is no dispute as to the expiration of the term, the parties shall execute a Release in form reasonably satisfactory to both parties. In such event, the requesting party shall, at its sole cost and expense, prepare such Release and present it to the non-requesting party. The non-requesting party shall then have five (5) Business Days from receipt of the proposed Release to review the same and notify the requesting party of any material deficiencies or errors in the Release. Upon the correction of any material deficiency or error in the Release, the non-requesting party shall promptly deliver an original executed Release to the requesting party who shall be responsible for causing the Release to be recorded in the Land Records. Any Release not so recorded shall not be deemed valid pursuant to this Article.

ARTICLE V
DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT. Each of the following shall constitute an "**Event of Default**" on the part of Developer:

(a) Developer defaults in the performance of any obligation, term, or provision under this Covenant, and such default shall continue uncured for thirty (30) days after written notice of such default from District, provided that if such default is not capable of being cured within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional reasonable period of time to the extent required to complete such cure provided that Developer is diligently prosecuting a cure;

(b) Developer fails to achieve Commencement of Construction or Completion of Construction by the date set forth in the Schedule of Performance, subject to Force Majeure;

(c) Developer shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment.

5.2 REMEDIES.

5.2.1 If any Event of Default occurs hereunder, District may elect to pursue any of the following remedies to the extent provided below, all of which are cumulative:

(a) District may draw on the Letters of Credit, in an amount to be determined by District, in its sole discretion, up to the full amount of the Letters of Credit, upon an Event of Default that arises under Section 5.1(b);

(b) District may cure Developer's Event of Default, at the reasonable cost and expense of Developer, after ten (10) Business Days notice to Developer. Developer shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) Business Days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Developer within thirty (30) Business Days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, until paid. Notwithstanding the foregoing, no amounts shall be due to District hereunder unless such cure is actually accomplished in accordance with the terms of this Covenant;

(c) District may pursue specific performance of Developer's obligations hereunder;

(d) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief; and

(e) District may exercise any and all rights as ground lessor under the Ground Lease.

5.2.2 If District pursues any of its remedies under this Section that require the filing of a court action and District prevails in a court of competent jurisdiction, District shall be entitled to reimbursement of its reasonable attorneys' fees and costs. In the event District is represented by OAG, attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current *Laffey* matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for and participated in any such litigation.

ARTICLE VI
INSURANCE OBLIGATIONS

6.1 INSURANCE COVERAGE. During the periods identified below, Developer shall carry and maintain in full force and effect the following insurance policies:

(a) Property Insurance - After achieving Completion of Construction, Developer shall maintain or ensure maintenance of property insurance insuring the Project under a Special Form (Causes of Loss) policy for 100% insurable replacement value with no co-insurance.

(b) Builder's Risk Insurance - During construction of the Project, Developer shall maintain builder's risk insurance for the amount of the completed value of the Project (or lesser amount acceptable to District) under a Special Form (Causes of Loss) policy with no co-insurance penalty, including flood risks if the Property is located in a flood zone, insuring the interests of Developer, District and any contractors and subcontractors.

(c) Automobile Liability and Commercial General Liability Insurance - At all times after the Effective Date of this Covenant until delivery of the Certificate of Final Completion, Developer shall maintain or shall cause its general contractor to maintain automobile liability insurance and commercial general liability insurance policies written to each have a combined single limit of liability for bodily injury and property damage of not less than three million dollars ($3,000,000.00) per occurrence, of which at least one million dollars ($1,000,000.00) must be maintained as primary coverage, and of which the balance may be maintained as umbrella coverage; provided however, that the foregoing statement as to the amount of insurance Developer or general contractor is required to carry shall not be construed as any limitation on Developer's liability under this Covenant. The foregoing limits may be increased by District from time to time, in its sole discretion.

(d) Workers' Compensation Insurance - At all times after the Effective Date of this Covenant until such time as all obligations of Developer hereunder have been satisfied or have expired, Developer shall maintain or shall cause its general contractor and any subcontractors to maintain workers' compensation insurance in such amounts as are required by Applicable Law.

(e) Professional Liability Insurance - During construction of the Project, Developer shall cause Architect, and every engineer or other professional who will perform material services in connection with the Project to maintain professional liability insurance with limits of not less than one million dollars ($1,000,000.00) for each occurrence, including coverage for injury or damage arising out of acts or omissions with respect to all design and engineering professional services provided by the architect of record, structural, electrical, and mechanical engineers with a deductible acceptable to District.

6.2 GENERAL POLICY REQUIREMENTS. All property and builder's risk insurance shall name District as a named insured. Any deductibles with respect to the foregoing insurance policies shall be commercially reasonable. All such policies of Developer or general contractor shall include a waiver of subrogation endorsement if available on commercially reasonable terms. All insurance policies required of Developer or general contractor pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage that District may carry. Such insurance shall be obtained through a recognized insurance company licensed to do business in the District of Columbia and rated by A.M. BEST as an A-X or above. The policies of Developer and general contractor shall contain an agreement by the insurer notifying District in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, including cancellation for nonpayment of premium, or other termination thereof or change therein.

ARTICLE VII
CASUALTY

7.1 PRIOR TO ISSUANCE OF THE CERTIFICATE OF FINAL COMPLETION. In the event of damage or destruction to the Project following the Effective Date, but prior to the issuance of the Certificate of Final Completion, Developer shall be obligated to repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District (such approval not to be unreasonably withheld, delayed or conditioned and to be deemed given if no response is given by District within ten (10) Business Days after a request for approval). If any such damage or destruction shall occur Developer and District shall make reasonable modifications to the Schedule of Performance. Notwithstanding anything in this Covenant to the contrary, District will not accept, nor shall Developer present to District, any Certificate of Final Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations.

7.2 AFTER ISSUANCE OF THE CERTIFICATE OF COMPLETION. Following the issuance of the Certificate of Final Completion and the execution and delivery by Developer and

District of the Ground Lease, the terms of the Ground Lease shall govern the restoration of the Project after damage or destruction to the Project after a casualty.

ARTICLE VIII
INDEMNIFICATION

Developer shall indemnify, defend, and hold District, its officers, employees and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly by any acts or omissions of Developer or Developer's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due to the gross negligence or willful misconduct of District or its officers, employees and agents.

ARTICLE IX
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Developer, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Developer hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by District, or such other designee of District as District may so determine.

ARTICLE X
AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and approved by OAG for legal sufficiency, and by Developer. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE XI
NOTICES

11.1 Any notices given under this Covenant shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand or by reputable private overnight commercial courier service to the parties at the following addresses:

DISTRICT:

Office of the Deputy Mayor for Planning and Economic

1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the Attorney General for the District of Columbia
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005
Attn: Deputy Attorney General, Commercial Division

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses:

DEVELOPER:

MM WASHINGTON REDEVELOPMENT PARTNERS LLC
c/o MissionFirst Development LLC
1330 New Hampshire Avenue, NW, Suite 116
Washington, D.C. 20036
Attention: Sarah Constant

With a copy to:

Nolan Sheehan Patten LLLP
50 Federal Street, 8th Floor
Boston, Massachusetts 02110
Attn: Stephen M. Nolan, Esq.

11.2 Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

ARTICLE XII
TRANSFER

12.1 Transfer. Developer agrees that it will not Transfer the Property or the Improvements, or cause or allow a Transfer of its membership interests or the membership interests in any entity which directly or indirectly controls Developer, at any time prior to Stabilization, without the prior approval of the District, which approval shall be within District's sole discretion; provided that no such approval shall be required for (i) an assignment of this Agreement or conveyance of the Property to an Affiliate; (ii) any Debt Financing or transfer or assignments relative to granting security for such Debt Financing, or any foreclosure, deed in lieu of foreclosure or other exercise of remedies by a Mortgagee, pursuant to the Project Funding Plan approved by District; or (iii) any Transfer involving the assignment of membership interests of Developer to an investor in connection with a Tax Credit Equity transaction, provided that any such transfer of membership interests does not create a change in control of Developer, and which Tax Credit Equity transaction is described in the Project Funding Plan approved by District, and (iv) any transfer due to death or incapacity of a Member or for estate planning purposes. Developer shall submit its written request for approval of the proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request. Following Stabilization, Developer may Transfer the Property or the Improvements, or cause or allow a Transfer of its membership interests, without the District's approval, provided such Transfer is not to a Prohibited Person. The obligations and liabilities of Developer under this Covenant shall apply only with respect to the period that such Developer owns a leasehold estate pursuant to the Ground Lease. Upon a permitted assignment by Developer of its leasehold estate under the Ground Lease (other than to a lender as security for a loan), such Developer shall be relieved of all obligations and liabilities under this Covenant arising after the date of the conveyance, but shall remain liable for all obligations and liabilities which accrued during the period of such Developer's ownership of the leasehold estate. Upon the assignment of the leasehold estate, the successor, transferee or assign in ownership or interest of any such Developer shall automatically become liable for all obligations arising after the date of the assignment. District shall provide to Developer, within ten (10) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default exists under this Covenant.

12.2 No Unreasonable Restraint. Developer hereby acknowledges and agrees that the restrictions on Transfers set forth in this Article do not constitute an unreasonable restraint on Developer's right to Transfer or otherwise alienate the leasehold estate created pursuant to the Ground Lease. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

[Signatures on following page]

IN WITNESS WHEREOF, the District has, on this _____ day of _____, 2010, caused this Covenant to be executed, acknowledged and delivered by Valerie-Joy Santos, Deputy Mayor for Planning and Economic Development, for the purposes therein contained.

DISTRICT:

DISTRICT OF COLUMBIA,
acting by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
Name: Valerie-Joy Santos
Title: Deputy Mayor for Planning and Economic Development

Approved for Legal Sufficiency:

Office of the Attorney General

By:_____
Assistant Attorney General

DEVELOPER:

MM WASHINGTON REDEVELOPMENT PARTNERS LLC, a District of Columbia limited liability company

By: MM Washington Manager LLC, its manager

By: Mission First Housing Development Corporation, Inc., its manager

By: _____
Sarah Constant, Managing Director

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, 2009 by Valerie-Joy Santos, the Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, has executed the foregoing and annexed document as her free act and deed.

Notary Public

[Notarial Seal]

My commission expires:

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this ____ day of _____, by _____, the _____ of MM WASHINGTON REDEVELOPMENT PARTNERS LLC, Developer herein, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, has executed the foregoing and annexed document as his/her free act and deed, for the purposes therein contained.

_____
Notary Public

[Notarial Seal]

My commission expires: _____

EXHIBIT A

Legal Description

EXHIBIT B

Schedule of Performance

EXHIBIT C

Final Project Budget

EXHIBIT D

Compliance Form

Exhibit D

AFFORDABLE HOUSING COVENANT
(Rental Units)

THIS AFFORDABLE HOUSING COVENANT (this "**Covenant**") is made as of the ___ day of _____, 20__, between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development (the "**District**") and (ii) MM WASHINGTON REDEVELOPMENT PARTNERS LLC, a District of Columbia limited liability company (the "**Developer**").

RECITALS

R-1. District is the fee simple owner of the Property.

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia.

R-3. District and Developer entered into that certain Disposition and Development Agreement (by Ground Lease), dated _____ (the "**DDA**"), whereby District and Developer agreed upon the terms for Developer to acquire by ground lease, develop and construct the Project on the Property (as such Property is more particularly described on Exhibit A).

R-4. Pursuant to the terms of the DDA, District and Developer entered into that certain Ground Lease, dated_____(the "**Ground Lease**"), pursuant to the terms of which the Property is leased by District to Developer.

R-5. The ground lease disposition of the Property by the District to the Developer was approved on July 16, 2010 by the Council of the District of Columbia pursuant to the MM Washington High School Disposition Approval Resolution of 2010 and the MM Washington High School Surplus Declaration and Approval Resolution of 2010 (collectively the "**Approval Legislation**"), subject to certain terms and conditions incorporated herein.

R-6. The District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will develop and lease the Affordable Units in the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Developer hereby declare, covenant and agree as follows:

ARTICLE I
DEFINITIONS

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

Affordable Rental Housing Lease Rider: is that certain lease rider, which is attached to this Covenant as Exhibit C and incorporated herein.

Affordability Requirement: the requirement that, consistent with the requirements of the Approval Legislation, the Affordable Units to be constructed shall be allocated as follows: (i) (i) initially, four (4) Residential Rental Units may be leased by Developer at market rates, and (ii) of the balance of the Residential Rental Units, eighteen and one half percent (18.5%) of the remaining Residential Rental Units shall be leased to tenants whose income is at or below thirty percent (30%) of AMI and eighty one and one half percent (81.5%) of the remaining Residential Rental Units shall be leased to tenants whose income is between thirty-one percent (31%) and sixty percent (60%) of AMI. By way of example, the Parties acknowledge and agree that, applying such requirements to the total number of Residential Residential Units proposed to be developed in the Project (i.e., 80), Developer shall reserve as ADUs at least 14 of the Residential Rental Units for lease to tenants whose income is at or below thirty percent (30%) of AMI and not less than 62 of the Residential Rental Units for lease to tenants whose income is between thirty-one percent (31%) and sixty percent (60%) of AMI

Affordable Tenant: a Qualified Tenant who has leased an Affordable Unit in accordance with this Covenant.

Affordable Unit: each Residential Rental Unit to be developed, used and/or leased for residential purposes that will be used to satisfy the Affordability Requirement pursuant to Article II.

Affordable Unit Index: an index of the initial Affordable Units contained in the Project Improvements, which enumerates: (i) unit number (or similar identifier), floor and location for each Affordable Unit, which Affordable Units may "float" and be replaced from time to time by Residential Rental Units which are not Affordable Units, so long as the total number and mix of Affordable Units does not change; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage of each Affordable Unit and a schematic drawing showing the layout of the unit; and (iv) floor plans showing the location of each Residential Rental Unit.

Agency: as defined in Section 4.14.

AMI: means (1) for a household of four persons, the area median income for a household of four persons in the Washington Metropolitan Statistical Area as set for the in the periodic calculation provided by HUD; (2) for a household of three persons, 90% of the area median income for a household of four persons; (3) for a household of two persons, 80% of the area median income for a household of 4 persons; (4) for a household of one person, 70% of the area median income for a household of four persons; and (5) for a household of more than four

persons, the area median income for a household of four persons, increased by 10% of the area median income for a family of four persons for each household member exceeding four persons.[

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth by the Agency.

Annual Report: as defined in Section 4.11.

Approval Legislation: as defined in R-5.

Base Finish Schedule: as defined in Section 2.3.5.

Building: means the building and improvements to be constructed as the Project in accordance with the Development Plan.

Business Day: means Monday through Friday, inclusive, other than holidays recognized by the District government.

Certification of Income: means a certification by Developer or a Certifying Authority stating that such Developer or Certifying Authority has verified that the Annual Household Income of a Qualified Tenant meets the Designated Affordability Level for an applicable Affordable Unit.

Certification of Residency: means a certification provided by an Affordable Tenant that certifies each Affordable Tenant with the information and on the form approved by the Agency that states that the Affordable Tenant occupies the Affordable Unit as its principal residence.

Certification of Tenant Eligibility: means a certification by a Qualified Tenant at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to District and Developer representing and warranting the following: (a) the Qualified Tenant has disclosed all of its Annual Household Income to Developer and/or the Certifying Authority, (b) the Qualified Tenant's Annual Household Income falls within the Designated Affordability Level for the applicable Affordable Unit, (c) the Qualified Tenant has been informed of its rights and obligations under this Covenant, (d) the Qualified Tenant intends to occupy the Affordable Unit as its principal residence, and (e) any other reasonable and customary representations requested by the Agency.

Certifying Authority: means the entity or entities approved by the Agency with which Developer may contract to (i) review and certify the eligibility of a Household as a Qualified Tenant and (ii) review appropriate documentation to support a Certification of Income for a Qualified Tenant.

Construction and Use Covenant: means that certain Construction and Use Covenant dated as of even date hereof with respect to the Project and recorded, or to be recorded, among the Land Records.

Covenant: as defined in the Introductory Paragraph.

DDA: as defined in R-3.

Designated Affordability Level: means the maximum percentage of AMI for any Affordable Unit (i.e. 30% AMI or 60% AMI for a household of four, as applicable).

Developer: as defined in the Introductory Paragraph and its successors and assigns of the Project.

Development Plan: means that certain Development Plan for the MM Washington School approved by District on [_____], as same may be amended from time to time.

DHCD: means the District Department of Housing and Community Development or any successor agency thereof.

District: as defined in the Introductory Paragraph.

Effective Date: means the date of full execution and delivery of this Covenant, which date shall be inserted on the first page hereof.

Ground Lease: as defined in Recital R-4.

HOPA: means the Housing for Older Persons Act of 1995.

Household: means all persons who will occupy the Affordable Unit; and the head of each Household must be at least fifty-five (55) years of age. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

HUD: means the United States Department of Housing and Urban Development, or its successor.

Land Records: means the real property records for the District of Columbia located in the Office of the Recorder of Deeds.

Low Income Household: means a Household with an Annual Household Income equal to or less than 30% of the AMI.

Marketing Plan: means Developer's plan for marketing to Qualified Tenants described in Section 4.2.1.

Market-Rate Unit: means each Residential Rental Unit that is not an Affordable Unit.

Maximum Allowable Rent or **MAR**: as defined in Section 4.4.2.

Moderate Income Household: means a Household with an Annual Household Income equal to or less than 60% of the AMI and greater than 30% of the AMI.

Monthly Utility Allowance: means the allowance for the cost of utilities paid by an Affordable Tenant, as determined for the Section 8 housing program for the District of Columbia, or as determined by an alternative project-specific method approved by the Agency.

Occupancy Standard Factor: means the assumed number of occupants for purpose of establishing the rental rate of an Affordable Unit as set forth in the following table:

Type of Affordable Unit	Occupancy Standard	Occupancy Standard Factor
Efficiency/Studio	1	0.7
1 Bedroom	2	0.8
2 Bedroom	3	0.9
3 Bedroom	5	1.1

Over-Income Formula or **OIF**: as defined in Section 4.5.3.

Over-Income Tenant: means a tenant of an Affordable Unit, who, at the execution of the lease qualified as an Affordable Tenant, but, at the time of lease renewal, has a Household whose Annual Household Income is greater than one hundred forty percent (140%) of the Moderate Income Household Designated Affordability Level for the applicable Affordable Unit.

Person: means any individual, or any corporation, limited liability company, trust, partnership, association or other entity.

Project: means construction and development of mixed-use development on the Property in accordance with the Construction and Use Covenant and this Covenant.

Project Improvements: means the structures, landscaping, hardscape and/or site improvements to be constructed in or placed on the Project area by Developer in accordance with the DDA, the Construction and Use Covenant, and this Covenant.

Property: means the real property in the District of Columbia located at 44 P Street NW (the "**Property**"), as more specifically described and identified by tax and assessment lot on Exhibit A, which Property shall be ground leased to Developer pursuant to the terms of the Ground Lease.

Qualified Tenant: means a Household, where at least one of the members of such Household are the age of fifty-five (55) years or older, that (i) has Annual Household Income, as verified by Developer or stated in the Certification of Income, less than or equal to the Designated Affordability Level for the applicable Affordable Unit at the time of leasing; (ii) shall occupy the Affordable Unit as its principal residence during the lease of such Affordable Unit; (iii) shall not permit exclusive occupancy of the Affordable Unit by any other Person; (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the particular income requirement associated with such Affordable Unit) and this Covenant; and (v) shall not permit the occupancy of the Affordable Unit by more than

two (2) people for a studio unit, three (3) people for a 1-bedroom unit and five (5) people for a 2-bedroom unit.

Rental Formula: as defined in Section 4.4.2.

Replacement Reserves: as defined in Section 4.10.

Residential Rental Unit: means any unit constructed as part of the Project to be developed, used and/or leased for residential rental purposes, including all Affordable Units and Market-Rate Units.

Utilities: means water, sewer, electricity, air conditioning, heat and gas.

ARTICLE II
AFFORDABILITY REQUIREMENT

2.1 Distribution of Project Affordable Units Throughout Project. The Affordable Units to be constructed in the Project shall be as set forth in the Development Plan and shall be integrated within each Building that contains a residential component.

2.2 Affordability Requirement. Developer shall construct, reserve, maintain and lease as Affordable Units that number of units that is required by the Affordability Requirement. For any Qualified Tenant, the Annual Household Income shall be determined as of the date of the lease for such Affordable Unit. Developer shall not lease any Affordable Unit to any Person other than a Qualified Tenant, and any such lease shall be null and void.

2.3 Affordable Unit Standards and Location.

2.3.1 *Unit Mix.* The Affordable Units shall be distributed across the housing unit mix (e.g., if the Market-Rate Units have a mix of 30% studios, 40% one-bedrooms, 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.3.2 *Size.* The Affordable Units shall be of a size equal to the Market-Rate Units, provided that affordable units may be the smallest size of each market rate type (studio, 1-bedroom and 2-bedroom units) and have no luxury-scaled unit counterpart.

2.3.3 *Exterior Finishes.* Exterior finishes of Affordable Units will be comparable in appearance, finish and durability to the exterior finishes of Market-Rate Units.

2.3.4 *Parking.* Parking spaces shall be leased separately at market rate.

2.3.5 *Interior Finishes.* Attached hereto as Exhibit B is the schedule of base finishes, appliances and equipment to be included in the Affordable Units (the "**Base Finish Schedule**"), and Developer shall construct and maintain the Affordable Units in accordance with or in excess of the standards set forth in the applicable Base Finish Schedule.

2.3.6 *Affordable Unit Location.* Affordable Units shall not be concentrated on any one floor or within a floor of a Building, without the approval of District, provided that Affordable Units do not need to be located on the top three (3) levels of any Building, have "prime" water views nor include bay windows or balconies.

2.3.7 *Changes to Unit Location.* Developer may transfer an Affordable Unit designation from an Affordable Unit to a Market-Rate Unit of equivalent size and location as necessary to allow an Over-Income Tenant to remain in the Property as a market rate tenant. Such transfer of designation shall be made immediately if an equivalent Market-Rate Unit is vacant and available, or to the next available equivalent Market-Rate Unit to become vacant. Developer may also transfer the designations of Affordable Units for occupancy by Low Income Households, Moderate Income Households and Workforce Households among each other as necessary to allow tenants to remain in the Property pursuant to Section 4.5.4 following changes in their income so long as any such transfer is between Affordable Units of equivalent size and location. Any such transfer of designation shall be made immediately if an Affordable Unit of equivalent size and location is vacant and available, or to the next available equivalent Affordable Unit to become vacant.

2.4 Affordable Unit Index. Attached hereto as Exhibit D is the Affordable Unit Index of the Affordable Units for the Project, which Affordable Unit Index has been approved by District as part of the Construction Plans and Specifications in accordance with the DDA. Prior to the commencing construction, Developer shall provide an updated Exhibit D to District for its approval pursuant to the Construction and Use Covenant as part of Developer's submission of Construction Plans and Specifications. Within five (5) Business Days following receipt of District's approval (or deemed approval) of the Affordable Unit Index, Developer shall record the approved Affordable Unit Index as an amendment to this Covenant in the Land Records. All modifications to the Affordable Unit Index shall be provided by Developer to District in Developer's Annual Report, as required by Section 4.11.1, provided that any such modification is consistent with the terms of this Covenant and the Construction and Use Covenant. Notwithstanding the foregoing, the Affordable Unit Index shall not be modified so as to amend the Affordability Requirements without the prior written approval of District, which approval shall only be given in District's sole and absolute discretion, and then only consistent with the Approval Legislation.

ARTICLE III
USE

3.1 Use. All Affordable Tenants shall have the same and equal use and enjoyment of all of the amenities and services available and/or provided to the tenants of the Market-Rate Units. No restrictions, requirements or rules shall be imposed on Qualified Tenants of the Affordable Units that are not imposed equally on the renters of the Market-Rate Units. If amenities, services, upgrades, or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the Market-Rate Units, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Affordable Tenants at the same upfront and or recurring cost or fee. If there is no cost or fee charged to the tenants of the Market-Rate Units for such amenities, services, upgrades or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Tenants. Developer shall market and

advertise residential units in the Building, and shall manage the residential units in the Building, at all times consistent with the requirements of HOPA.

3.2 Demolition/Alteration. Developer shall not demolish or otherwise structurally alter any Affordable Unit or remove fixtures or appliances installed in the Affordable Unit as of the initial rental of an Affordable Unit by Developer.

ARTICLE IV
RENTAL OF AFFORDABLE UNITS

4.1 Notice of Availability of Affordable Unit. When an Affordable Unit becomes available for rent, Developer shall provide District written notice within ten (10) Business Days of its availability and proof that the Affordable Unit has been registered on the Housing Locator website established under the *Affordable Housing Clearinghouse Directory Act of 2008*, D.C. Law 17-215, effective August 15, 2008 provided such website is operating for the aforesaid purpose.

4.2 Rental Affordable Unit Admissions Process.

4.2.1 *Marketing Plan.* Developer shall create a Marketing Plan that sets forth its plan for marketing to Households who may be Qualified Tenants, which Marketing Plan shall be subject to District's prior written approval. The Marketing Plan shall be consistent with the "Affordable Housing Plan" included as part of the Development Plan. Developer may contract with the Certifying Authority to implement the Marketing Plan.

4.2.2 *Referrals.* Developer may obtain referrals from the Agency of prospective tenants that have self-certified their Annual Household Income as meeting the Designated Affordability Level.

4.2.3 *Consideration of Applicants.* Developer shall consider each applicant in the order in which received by Developer, whether received pursuant to the approved Marketing Plan or referred by the Agency, provided that any such applicant has completed in full any application required by Developer.

4.2.4 *Rejection of Applicants.* In connection with the leasing of an Affordable Unit, Developer may reject any applicant after diligent review of such applicant's application, background and/or creditworthiness, Developer determines in good faith that such applicant does not meet Developer's criteria to lease or occupy an Affordable Unit. The Developer shall be solely responsible for ensuring that its rejection of any applicant is not in violation of federal law and/ or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq.*

4.2.5 *Determination of Eligibility.* Developer shall be solely responsible for determining the eligibility of the Qualified Tenants and for obtaining the executed Certification of Tenant Eligibility. Developer shall, in accordance with terms of this Covenant, determine the eligiblity of the Qualified Tenants, including the verification of submitted information and confirmation of such Qualified Tenant's Certification of Tenant Eligibility, Certification of

Residency or other information provided to Developer to allow Developer to complete a Certification of Income, and retain any documentation of such determination.

4.3 Rental Affordable Unit Lease Requirements.

4.3.1 *Form of Lease.* To lease an Affordable Unit to a Qualified Tenant, Developer shall use a lease agreement, to which is attached and incorporated an Affordable Rental Housing Lease Rider. The Affordable Rental Housing Lease Rider shall be executed by Developer and each Qualified Tenant.

4.3.2 *Effectiveness of Lease.* The lease of an Affordable Unit shall only be effective if an Affordable Rental Housing Lease Rider, a Certification of Income and a Certification of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.3.3 *Developer to Maintain Copies.* Developer shall maintain copies of all initial and renewal leases executed with Qualified Tenants.

4.4 Initial Lease Terms.

4.4.1 *Term.* The term of any Affordable Unit lease agreement shall only be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**" or "**MAR**") for each type of Affordable Unit shall be determined through the use of the formula MAR = (DAL * OSF * 30%) / 12 – MU ("**Rental Formula**"), where:

(i) DAL = Annual Household Income at the Designated Affordability Level

(ii) OSF = Occupancy Standard Factor

(iii)30% = Thirty percent (30%)

(iv) 12 = Number of months in the year

(v) MU = Monthly Utility Allowance

4.5 Subsequent Lease Years.

4.5.1 *Use of Rental Formula.* Developer shall use the Rental Formula to determine the Maximum Allowable Rent in lease years after the first lease year.

4.5.2 *Submission by Affordable Tenant.* Developer shall require that each Affordable Tenant that intends to renew its lease submit to Developer (i) a Certification of Residency and (ii) documents sufficient to allow Developer to complete a Certification of Income. An Affordable Tenant shall not have its lease renewed unless the Affordable Tenant has provided Developer with these documents prior to the end of their lease term.

4.5.3 *Over-Income Formula; Over-Income Tenant.* (a) If the Annual Household Income of an Affordable Tenant at the time of a lease renewal exceeds the Designated Affordability Level for the applicable Affordable Unit, the Affordable Unit shall continue to be considered as an Affordable Unit and the Affordable Tenant shall be permitted to renew its lease so long as the tenant is not an Over Income Tenant. The monthly rental rate to be paid by the Affordable Tenant whose income rises above the Designated Affordability Level but is below the Over-Income Tenant level during the renewal term shall be the lesser of: (i) as determined using the following formula, OIF = (AHI * OSF * 30%) / 12 – MU (**"Over-Income Formula"** or **"OIF"**) or (ii) the market-rate rental rate for a similar Residential Rental Unit. OIF is calculating based on:

(i) AHI = Annual Household Income

(ii) OSF = Occupancy Standard Factor

(iii) 30% = Thirty percent (30%)

(iv) 12 = Number of months in the year

(v) MU = Monthly Utilities Allowance

(b) If, after providing the documents requested in Section 4.5.2, an Affordable Tenant is deemed to be an Over-Income Tenant by Developer, Developer shall within 10 days after making such determination, give the Over-Income Tenant written notice that its lease will not be renewed. Developer shall permit the Over-Income Tenant to continue to occupy the Affordable Unit at the current rent for not less than three (3) and no more than six (6) months after the end of the Over-Income Tenant's lease, and shall give the Over-Income Tenant the right to relocate the Household to either (i) an available Market Rate Unit, or (ii) if the Household qualifies for another available Affordable Unit, to another Affordable Unit. If the Over-Income Tenant fails within six (6) months of the end of its lease to either relocate to an available Residential Rental Unit or vacate the Affordable Unit, Developer shall have the right exercise its remedies available under terms of the lease agreement and applicable law.

4.5.4 *Change in Affordable Tenant Income.* If an Affordable Tenant's Annual Household Income shall, upon annual income recertification, either decrease or increase (other than an increase resulting in such Affordable Tenant becoming an Over-Income Tenant) from such Affordable Tenant's prior certification or recertification, as applicable, then the following shall apply:

(a) If an Affordable Tenant who previously qualified as a Moderate Income Household is recertified with an Annual Household Income that would now qualify such Affordable Tenant as a Low Income Household, then Developer will transfer the designation of such Affordable Tenant's Affordable Unit from Moderate Income Household to Low Income Household to allow such tenant to remain following such change in its income so long as any such transfer is between Affordable Units of equivalent size and location. Any such transfer of designation shall be made immediately if an Affordable Unit of equivalent size and location is vacant and available, or to the next available equivalent Affordable Unit to become vacant. Such

Affordable Tenant will pay no more than the Maximum Allowable Rent for the applicable low income unit upon such transfer.

(b) If an Affordable Tenant who previously qualified as a Low Income Household is recertified with an Annual Household Income over 50% of AMI, then Developer will transfer the designation of such Affordable Tenant's Affordable Unit from Low Income Household to Moderate Income Household to allow such tenant to remain following such change in its Annual Household Income so long as any such transfer is between Affordable Units of equivalent size and location. Any such transfer of designation shall be made immediately if an Affordable Unit of equivalent size and location is vacant and available, or to the next available equivalent Affordable Unit to become vacant. Such Affordable Tenant will pay no more than the Maximum Allowable Rent for the applicable moderate income unit upon such transfer.

4.6 No Subleasing of Rental Affordable Units. An Affordable Tenant shall not sublease or assign its lease to any Affordable Unit.

4.7 Representations of Qualified Tenant. By execution of a lease agreement for an Affordable Unit, each Qualified Tenant shall be deemed to represent and warrant to District, Developer and the Certifying Authority, as applicable, and each of whom may rely, that the Qualified Tenant: (a) is leasing the Affordable Unit as a principal residence and has no ownership or leasehold interest in any other housing, (b) is not or will not sublease or assign any portion of its leasehold interest in the Affordable Unit to any Household, (c) will not allow any other Household to reside in the Affordable Unit with the Qualified Tenant except in strict compliance with the terms of the lease agreement, (d) will not allow more than the number of persons permitted under the terms of the lease, including the Qualified Tenant, to reside at the Affordable Unit; (e) has noted all persons in the Household on the lease agreement, and included all members of the Household over fifty-five (55) years of age as parties to the lease agreement; and (f) acknowledges that their Household is the beneficiary of District's public policy of increasing the affordable housing stock in District of Columbia and desires, through its use and leasing of the Affordable Unit to further such public policy.

4.8 Representations of Developer. By execution of a lease agreement for an Affordable Unit, Developer shall be deemed to represent and warrant to District, who may rely, that: (i) to Developer's knowledge, the Household is a Qualified Tenant, and (ii) Developer is not charging the Qualified Tenant more than Maximum Allowable Rent or, if the Qualified Tenant has an income above the Designated Affordability Level, subject to Section 4.5.3, Developer is not charging the Qualified Tenant more than the rent due under the Over-Income Formula and otherwise satisfies the terms of this Covenant.

4.9 Annual Certification of Unit Inspection. Each year Developer shall conduct a physical inspection of all Affordable Units in the Project Improvements to certify that each unit is in compliance with all applicable housing statutory and regulatory requirements.

4.10 Replacement Reserves. Prior to Developer's receipt of a Certificate of Occupancy for any Affordable Unit, Developer shall establish replacement reserves for future maintenance, repair and capital improvements for each Affordable Unit at commercially reasonable levels

("**Replacement Reserves**"). Such Replacement Reserves shall be deposited and maintained in an interest bearing account with a federally insured financial institution chosen by Developer.

4.11 Reporting Requirements.

4.11.1 *Annual Reports.* Beginning with the first year of occupancy of any Affordable Unit, the Developer shall provide an annual report ("**Annual Report**") to the District regarding the Affordable Units, which report shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the current Affordable Unit Index, specifying any modifications to the initial Affordable Unit Index approved by District;

(b) the number and identification of the Affordable Units that are occupied and the current rent for each such occupied Affordable Unit;

(c) the number and identification of the Affordable Units that are vacant;

(d) for each vacant Affordable Unit, the date upon which the tenant provided a notice to vacate and the progress of having the unit re-occupied;

(e) for each occupied Affordable Unit, the names and ages of all persons in the Household, the Household size, the date on which the Household initially occupied the Affordable Unit, and total Annual Household Income as of the date of the most recent Certification of Income;

(f) a sworn statement that, to the best of the Developer's information and knowledge, the Household occupying each Affordable Unit meets the eligibility criteria of this Covenant;

(g) a copy of each new or revised Certification of Income for each Household renting an Affordable Unit;

(h) a copy of each new and revised Certification of Residency for each Household renting an Affordable Unit;

(i) an annual accounting of the Replacement Reserves, including funds added, any funds withdrawn, and the uses of the withdrawn funds; and

(j) a copy of each inspection report and Certification of Inspection for each Affordable Unit.

The Annual Reports shall be retained by the Developer for a minimum of five years (5) after submission and shall be available, upon reasonable notice, for inspection by the District or its designee.

4.12 Confidentiality. Except as may be required by law, including, without limitation, the District of Columbia Freedom of Information Act of 1976, D.C. Code § 2-531 et seq., Developer and District shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.13 Inspection Rights. In addition to District's inspection rights contained in the Construction and Use Covenant, District or its designee shall have the right, at no cost to Developer, to inspect the Affordable Units during normal business hours and upon reasonable advance notice. District or its designee shall have the right, at no cost to Developer, to inspect a random sampling of the Affordable Units to confirm the units are in compliance with applicable statutory and regulatory housing requirements. During normal business hours and upon reasonable advance notice, District or its designee shall have the right, at no cost to Developer, to conduct audits of a random sampling of the Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

4.14 Agency. Developer agrees to make all submissions and request all approvals required under this Covenant to such Agency (the "**Agency**") appointed to administer the "*Inclusionary Zoning Implementation Amendment Act of 2006*," (D.C. § Code 6-1041.01 *et seq.*) under D.C.M.R. § 11-2600 *et. seq.* The Agency shall provide multiple names of Qualified Tenants for consideration by Developer and such names may be retained on a list of Qualified Tenants maintained by Developer, subject to re-qualification if such Qualified Tenant does not execute a lease agreement for an Affordable Unit within six (6) months of such Agency's delivery of its list identifying such Qualified Tenant.

4.15 Certifying Authority. Developer may contract with a Certifying Authority approved by the Agency to perform certain obligations contained herein. Developer's selection of a Certifying Authority shall be subject to Agency's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request by Developer, District shall complete its review of Developer's request for the proposed Certifying Authority and provide a written response thereto within fifteen (15) Business Days after its receipt of the Developer's request.

ARTICLE V
ENFORCEMENT AND REMEDIES

5.1 Generally. Developer shall be deemed to agree that District and its designees shall have the right to institute such actions or proceedings as it may deem necessary, desirable or appropriate, in law and at equity, for effectuating the purposes of this Covenant and enforcing the obligations set forth herein, including without limitation the right to seek specific performance, injunctive relief and other equitable remedies including without limitation the remedy of rescission with respect to the lease of an Affordable Unit not in compliance with this Covenant.

5.2 Additional Remedies. In addition to those remedies contained in Section 5.1, District shall be entitled to exercise the following remedies:

(a) If Developer leases an Affordable Unit to an Affordable Tenant at a rental rate in excess of the maximum amount permitted hereunder, then Developer shall pay to District all proceeds received by Developer from such lease in excess of the maximum amount permitted hereunder.

(b) If Developer leases an Affordable Unit to a Household that is not a Qualified Tenant, then Developer shall pay to District an amount equal to the annual rental rate for a Market Rate Unit comparable to the applicable Affordable Unit for every month that the Affordable Unit is occupied by a tenant other than a Qualified Tenant. In no event, however, shall Developer (or any of its successors) be in breach of this Covenant or be required to make any payment described in first sentence of this Section 5.2(b) for leasing an Affordable Unit to a Household that is not a Qualified Tenant if (i) Developer (or its successor) is pursuing available remedies against such Household to terminate its lease and recover possession of such Affordable Unit, or (ii) Developer is pursuing available remedies against a Household who does not provide its Certificate of Residency or information to allow Developer to complete a Certification of Income.

5.3 Attorneys' Fees. In the event District prevails in any legal action or proceeding to enforce the terms of this Agreement, District shall be entitled to recover from Developer the reasonable attorneys' fees and costs incurred by District in such action or proceeding. In the event District is represented by the Office of the Attorney General for the District, reasonable attorneys' fees shall be calculated based on the then applicable hourly rates established in the most current Adjusted Laffey Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

ARTICLE VI
COVENANTS RUN WITH LAND AND ARE BINDING ON SUCCESSORS AND ASSIGNS

This Covenant shall be recorded in the Land Records and shall run with the Property as a perpetual lien on the Property for the period provided herein, and shall be binding upon each Affordable Unit in the Property and on the ground lease estate created by the Ground Lease. The rights and obligations of District and Developer and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of District pertaining to the monitoring and/or enforcement of the obligations of Developer hereunder shall be retained by District, or such designee of District as District may so determine. No sale, transfer or foreclosure shall affect the validity of this Covenant.

ARTICLE VII
AMENDMENT OF COVENANT

Neither this Covenant, nor any part hereof, can be amended, modified or released other than by an instrument in writing executed by a duly authorized official of District of Columbia on behalf of District and if prior to the initial conveyance by Developer of all Affordable Units, by a duly

authorized representative of Developer. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE VIII
TERM OF COVENANTS

This Covenant shall remain in full force and effect against the Property, the ground lease estate created by the Ground Lease and the Affordable Units for a term of forty (40) years following the Effective Date.

ARTICLE IX
NOTICES

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to District at the following addresses:

DISTRICT:

District of Columbia
Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, D.C. 20004
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

The Office of the Attorney General for the District of Columbia
1100 15th Street, N.W., Suite 800
Washington, D.C. 20005
Attn: Chief, Real Estate Transactions Section

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses, or to such other persons or locations as Developer may designate in writing to District from time to time:

DEVELOPER:

MM Washington Redevelopment Partners
LLC
c/o MissionFirst Development, LLC
1330 New Hampshire Avenue, NW, Suite
116
Washington, DC 20036

Attn: Sarah Constant

With a copy to:

Nolan Sheehan Patten LLP
50 Federal Street, 8th Floor
Boston, MA 02110
Attn: Stephen M. Nolan, Esq.

Notices which shall be delivered to Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; (iii) if given by certified mail (return receipt requested, postage pre-paid), on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

ARTICLE X
MISCELLANEOUS

10.1 Law Applicable; Forum for Disputes. This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Each of Developer and District irrevocably submits to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Each of District and Developer irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in (i) the courts of District of Columbia and (ii) the United States District Court for the District of Columbia, and hereby further waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

10.2 Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

10.3 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or District holiday is automatically extended to the next Business Day.

10.4 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.5 Further Assurances. Each party agrees to execute and deliver to the other party such additional documents and instruments as the first party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

10.6 Severability. If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

10.7 Developer's Limitation of Liability.

10.7.1 Developer shall be responsible for the performance of all obligations contained in this Covenant. Developer may contract with a Certifying Authority to perform certain obligations contained herein but shall remain liable for the performance of such obligations. In the event the Certifying Authority violates any provisions of this Covenant, Developer shall provide written notice of such violation to District and shall correct such violation or cause the Certifying Authority to correct the violation, both within a reasonable cure period approved by District. If the violation is not cured within the approved reasonable cure period, District shall have the right to pursue its remedies under Article V.

10.7.2 Provided that Developer has exercised reasonable due diligence in the performance of its obligations and duties herein, Developer shall not be liable, in the event a tenant submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Developer shall be liable if Developer has knowledge, or should have knowledge that a tenant submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

10.8 District Limitation of Liability.

10.8.1 Any review or approval by the Agency or District shall not be deemed to be an approval, warranty, or other certification by District as to compliance of such submissions, the Project Improvements, or the Property with any building codes; regulations; standards; laws; or any other requirements contained in the Construction and Use Covenant or any other covenant granted in favor of District that is filed among the Land Records; or otherwise contractually required. The Agency and District shall incur no liability in connection with District's and/or Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting District's interest under this Covenant.

10.8.2 Developer shall be solely responsible for certifying the Annual Household Income for tenants of the Affordable Units. The Agency's referral of self certified prospective tenants shall not be deemed as the Agency's acceptance of such tenant as a Qualified Tenant.

10.9 No Third Party Beneficiary. There are no intended third party beneficiaries of this Covenant, and no party other than District shall have standing to bring an action for breach of, or to enforce the provisions of this Covenant.

10.10 Estoppel Certificates. District and Developer shall, from time to time, within twenty (20) Business Days of request in writing of District or Developer, without additional consideration, execute and deliver an estoppel certificate consisting of statements, if true (and if not true, setting forth the true state of facts as the party delivering the estoppel certificate views them), that (a) this Covenant is in full force and effect; (b) this Covenant has not been modified or amended (or if it has, a list of the amendments); (c) to such party's knowledge, the party requesting the estoppel certificate is not then in default under this Covenant; and (d) to such party's knowledge, the party requesting the estoppel certificate has fully performed all of its respective obligations hereunder and thereunder.

10.11 Delegation. District may, with prior written notice to Developer, designate one or more agencies or instrumentalities of District to act as District's agent for the purpose of this Covenant.

[*Signatures on following pages*]

IN TESTIMONY WHEREOF, (i) the District has caused these presents to be signed, acknowledged and delivered in its name by the Deputy Mayor for Planning and Economic Development, its duly authorized representative, witnessed by _____, its _____ in the Office of the Deputy Mayor for Planning and Economic Development and (ii) Developer has caused these presents to be signed, acknowledged and delivered in its name by _____ and _____, its duly authorized _____ and _____, respectively, witnessed by _____, its _____.

WITNESS:

By:_____
Name:
Title:

DISTRICT OF COLUMBIA

By:_____[SEAL]
Name:_____
Title: Deputy Mayor for Planning and Economic Development

Approved as to legal sufficiency:

D.C. Office of the Attorney General

By: _____
Assistant Attorney General

MM WASHINGTON REDEVELOPMENT PARTNERS LLC, a District of Columbia limited liability company

By: MM Washington Manager LLC, its manager

By: Mission First Housing Development Corporation, Inc., its manager

By: _____
Sarah Constant, Managing Director

WITNESS:

By:_____

STATE _____)
)
COUNTY_____) ss:
)

I, _____, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____, the Deputy Mayor for Planning and Economic Development, who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed Affordable Housing Covenant bearing date as of the _____, personally appeared before me in said jurisdiction and acknowledged the same to be his free act and deed.

Given under my hand and seal this ___ day of _____.

_____
Notary Public

My Commission Expires: _____

CITY OF WASHINGTON

ss.

DISTRICT OF COLUMBIA

I, _____, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT _____ who is personally known to me (or proved by oaths of credible witnesses to be) the person named as _____ of _____ the Manager of Developer in the foregoing and annexed Affordable Housing Covenant, bearing the date of the _____ personally appeared before me in said District of Columbia, and as _____, acting on behalf of Developer, as aforesaid, acknowledged the same to be his free act and deed.

Given under my hand and seal this ___ day of _____.

_____
Notary Public

My Commission Expires: _____

Exhibit A

Property Description

TO BE ATTACHED

Exhibit B

Base Finish Schedule

[To be created by Developer and approved by the District prior to the Closing on the Ground Lease.]

Exhibit C

Affordable Rental Housing Lease Rider

AFFORDABLE RENTAL HOUSING LEASE RIDER

Lessor: _____

Lessee: _____

Unit Number: _____ **(the "Unit")**

Lease Date: _____

Lessee is leasing a rental affordable unit located within a community which has received certain economic benefits from the Government of the District of Columbia. As a result, the Lease Agreement for the Unit is amended by the following provisions, which supersede any contrary provisions of the main text of the Lease Agreement.

1. **Affordable Unit**

Lessee acknowledges that he or she will be occupying the Unit at a reduced rent and that such Unit is subject to provisions and conditions set forth in that certain Affordable Housing Covenant dated as of _____, 200__ recorded among the land records as instrument number _____, on _____, 200__ ("Covenant"), attached hereto. Lessee further acknowledges that his or her continued occupancy of the Unit is subject to annual certification of eligibility and residency, as set forth in paragraph 3.

2. **Eligibility**

Eligibility for the dwelling unit is based upon information supplied by Lessee in connection with his or her household's Certification of Tenant Eligibility and Certification of Residency as defined in the Covenant. By execution of this Lease Rider, Lessee certifies that the information provided in its application is true and correct.

3. **Recertification**

Each year of occupancy of the Unit, Lessee shall be required to execute and submit to Lessor a Certification of Residency. Failure to truthfully provide all information and sign the required documents under this Lease Agreement when requested by Lessor will result in automatic termination of the Lease by the Lessee. Any intentional misrepresentation, falsification, or failure to report any facts which are necessary to determine initial or continued eligibility and/or sustainability of the Affordable Unit shall result in an automatic termination of the Lease by the Lessee.

Lessee agrees to provide all information pertaining the household composition, student status, income and assets for all household members and to authorize release of information from third party sources, promptly when requested by Lessor for each occupant of the Unit.

4. **Lease Term**

The lease term shall be for than one (1) year unless terminated earlier in accordance with the terms of this Lease Agreement.

5. **Affordable Monthly Rent**

Lessee shall pay the monthly rent as calculated by Lessor in accordance with the Covenant.

6. **Assignment/Sub-Lease**

Lessee shall not authorize any person to occupy the Unit other than the persons identified in the Lease Agreement or permit any boarders or lodgers. Lessee shall not assign this Lease Agreement or sublease the Unit.

7. **Inspection/Right of Entry**

The Unit shall be inspected annually by Lessor or its designee. Upon at least two (2) business days' written notice to the Lessee, Lessor shall be permitted to enter the Unit during reasonable hours for purposes of performing the inspection required in the Covenant.

_____ _____

Lessee Date

_____ _____

Lessor Date

Exhibit D

Affordable Unit Index

[To be agreed upon by the District and Developer prior to execution of the DDA.]

Exhibit F

DEVELOPMENT AND COMPLETION GUARANTY

[redacted]

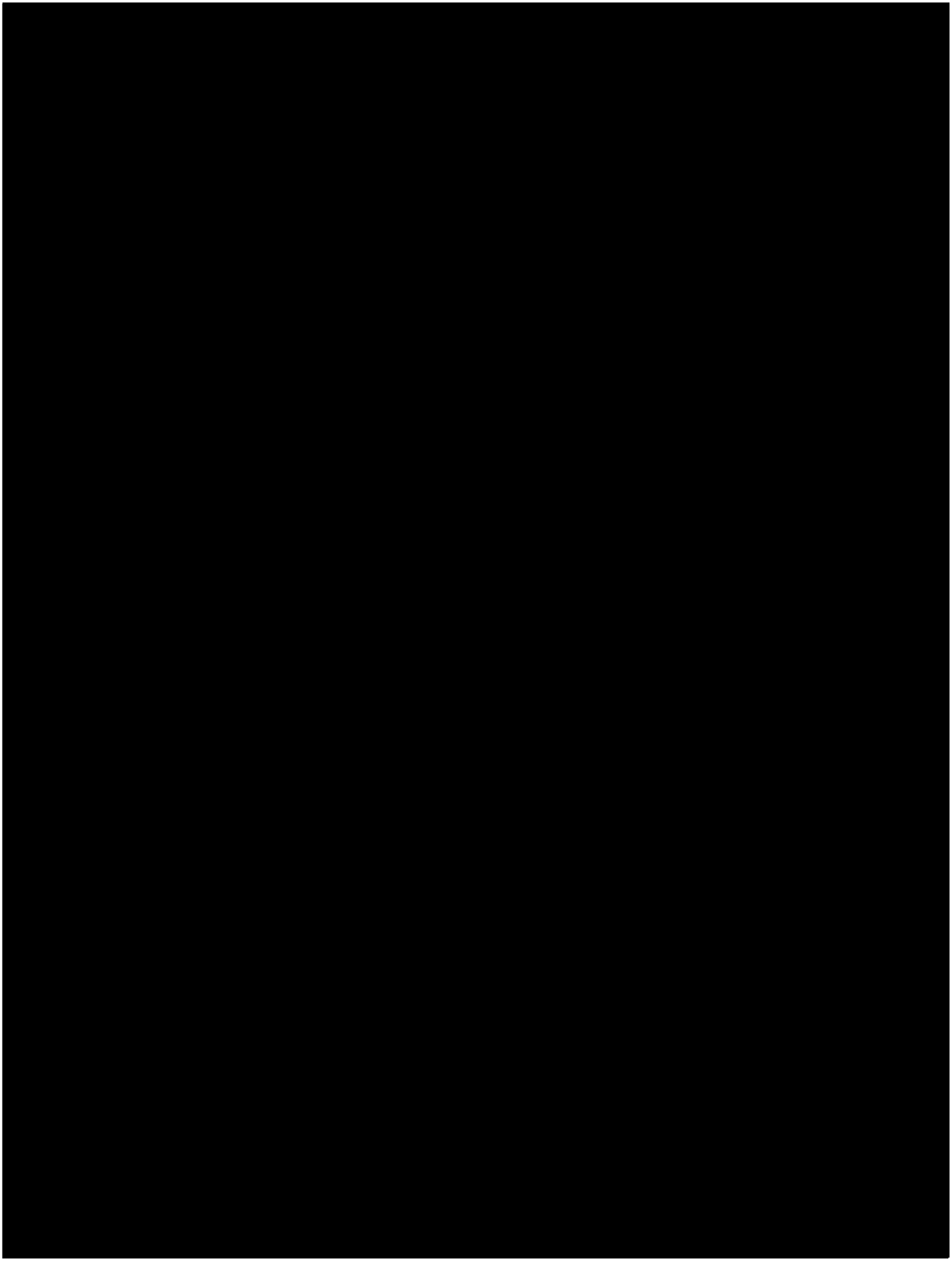

Exhibit J

ADA CERTIFICATE

Reference is made to that certain Disposition and Development Agreement (Ground Lease) between the undersigned, **MM Washington Redevelopment Partners, LLC**, a District of Columbia limited liability company (the "Developer") and the **District of Columbia** (the "District"), dated as of _____, 20__(the "Agreement"). Initially capitalized terms used in this ADA Certificate shall have the meanings ascribed to them in the Agreement.

Developer hereby certifies to the District, pursuant to Section 4.1.2(c) of the Agreement, that the Improvements in the Project have been designed in accordance with all Applicable Law relating to accessibility for persons with disabilities.

This ADA Certificate is dated this ____day of ____, 20__.

MM WASHINGTON REDEVELOPMENT PARTNERS LLC
a District of Columbia limited liability company

By: MM Washington Manager LLC, its manager

By: Mission First Housing Development Corporation, Inc., its manager

By: _____
Sarah Constant, Managing Director

Exhibit K